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# MISHNAH AND TOSEFTA

A Comparative Study

PART I.—SHABBAT

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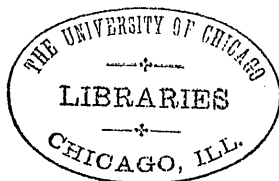
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To the Sacred Memory  
of My Father





## TABLE OF CONTENTS

|               |       |
|---------------|-------|
| PREFACE ..... | I-III |
|---------------|-------|

### INTRODUCTION:

|                            |       |
|----------------------------|-------|
| Chapter I, Mishnah .....   | 3-25  |
| Chapter II, Baraita .....  | 26-36 |
| Chapter III, Tosefta ..... | 37-65 |

### ANALYSIS OF MISHNAH AND TOSEFTA SHABBAT:

|                     |         |
|---------------------|---------|
| Chapter I .....     | 66-73   |
| Chapter II .....    | 74-79   |
| Chapter III .....   | 80-85   |
| Chapter IV .....    | 86      |
| Chapter V .....     | 87      |
| Chapter VI .....    | 88-91   |
| Chapter VII .....   | 92-95   |
| Chapter VIII .....  | 96-97   |
| Chapter IX .....    | 98-102  |
| Chapter X .....     | 103-107 |
| Chapter XI .....    | 108-109 |
| Chapter XII .....   | 110-113 |
| Chapter XIII .....  | 114-115 |
| Chapter XIV .....   | 116-117 |
| Chapter XV .....    | 118-119 |
| Chapter XVI .....   | 120-122 |
| Chapter XVII .....  | 123-125 |
| Chapter XVIII ..... | 126-127 |
| Chapter XIX .....   | 128-134 |
| Chapter XX .....    | 135-137 |
| Chapter XXI .....   | 138     |
| Chapter XXII .....  | 139-141 |
| Chapter XXIII ..... | 142-144 |
| Chapter XXIV .....  | 145-146 |



## PREFACE

In the following we are presenting a critical analysis of the Mishnah and Tosefta of Shabbat with comments mostly upon such passages, where something new could be offered. Though many theories have been propounded and much valuable material in the way of statistical data has been collected to explain the genesis and nature of the Tosefta, still many points in connection with this compendium are in need of clarification.

The difficulties that beset a student of the literary questions of the Tosefta are increased by the fact that some of the problems are so intertwined, that a simple but exhaustive tabulation of data in connection with single points drawn from the entire Tosefta, are inadequate for a full comprehension of the problem. Thus the question of sequence of paragraphs in the Tosefta cannot be disposed of by a simple comparison with that of the order of statements in the Mishnah. In many instances where a superficial examination of the parallel chapters in the Mishnah and Tosefta, will reveal a deviation in sequence in the Tosefta, an analysis of the Tosefta passages in question will disclose their composite origin, and force one to other conclusions. It is true that it has been frequently assumed that the Tosefta is interwoven with elements of a different character and origin, but there is still lacking a critical analysis of the structure of individual treatises of the Tosefta, with due regard to its relation to the Mishnah.

Some of the difficulties in studying the literary problems of the Tosefta, are not peculiar to this book, but apply to the other Tannaitic collections as well, and for this reason we have made some introductory remarks concerning the Mishnah and the Baraita.

As for the Mishnah, we have given a general view of its development. In the course of our succinct survey we have offered a new interpretation of the oft quoted passage, Tosefta Eduyot I.1, and subjected to a new scrutiny, the much debated remark *סתם מחניתין ר' מאיר* which is pivotal for the understanding of the authorship of various Tannaitic collections. An analysis of the structure of the Mishnah of Baba Kamma was given as an illustration of the fact that the treatise is the result of the combination of various sources.

The discussion of the baraita was limited to those extra-Mishnaic collections made during Rabbi Judah's lifetime and shortly thereafter, attention being called to the fact that the homage paid to R. Hiyya by the latter Amoraim was not unanimous. The role played by the baraita in standardizing religious practice was also pointed out.

In regard to the Tosefta, we have arrived at the conclusion that it was first compiled by the *בית רבי*. The Tosefta is a compilation gathered from various sources of different dates, but did not exist in collected form before taken in hand by the Bet Rabbi. Its purpose was to be a companion volume to the Mishnah constructed according to the same plan and composed to some extent from the same materials. The numerous discrepancies in sequence between the Mishnah and Tosefta that obtrude themselves upon the reader's notice are due to the differences in origin of the materials of the two parallel compendia. The Tosefta, being one of the disciplines of study, was perhaps known to the Babylonian and Palestinian Amoraim, but they were not thoroughly conversant with it, hence we find questions in the Talmud unanswered, although the Tosefta actually contains explicit information apropos those inquiries. The Tosefta was compiled in Palestine, as the greater number of passages agreeing with the baraitot in the Yerushalmi indicate, but changes and insertions were made in Babylonia.

In the three introductory chapters, the writer has embodied some of the observations he has made in the course of a critical study of twelve treatises of the Mishna and Tosefta, which he intends to publish elsewhere.

In conclusion, it is a great pleasure to be able to express my gratitude to Professor Louis Ginzberg whom I owe more than I can say. He first excited my interest in the literary problems of the Tannaitic compositions, and was most lavish in giving of his unrivalled erudition. He enriched my work with many keen observations and penetrating criticisms which are mostly found at the end of the book. I am beholden also to Professor Alexander Marx, who has given me the benefit of his good judgment and thorough comprehension of the problems of literary criticism. He has graciously called my attention to a number of points which I otherwise would have overlooked.



# **MISHNAH AND TOSEFTA**

A Comparative Study





## CHAPTER I

### MISHNAH

Ever since the time of Krochmal the literary problems of Tannaitic literature have been investigated in a critical and scientific manner by many scholars. Great progress has been made towards the understanding of the formation, development and purpose of the various Tannaitic compendia, nevertheless some matters still remain obscure, and perhaps will always remain so. It is extremely difficult for a modern student who is mainly accustomed to acquire knowledge from written sources to comprehend adequately the problem of learning confronting the ancients who chiefly derived their information orally.<sup>1</sup> The earlier Tannaitic digests of law, such as the Mishnah of R. Akiba, or that of his disciples have not come down to us in their original form.

The Tosefta, though it contains elements that antedate the Mishnah, was redacted somewhat later. In order to determine what is the structure, arrangement, and relation of these compilations to one another, it would be necessary to have a clear notion of the composition of these various precis of halakah. At present, it is well-nigh impossible to reconstruct the Mishnah of R. Akiba or that of his disciples, on the basis of their extant sayings, because we do not know their original context. We have few and faint clues to guide us towards a sure understanding of the form and content of the pre-Mishnaic summaries of Jewish tradition. Precise and certain principles are lacking by which one can determine the extent to which the present Mishnah has been compiled, and to what degree it has been edited by R. Judah ha-Nasi.

Perhaps it may not be amiss to summarize briefly the present state of knowledge concerning the genesis, evolution, and design of the Mishnah. Alongside of the Pentateuch, which was the ultimate authority for Jewish life and ritual, there grew up during the Second

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1. On the question whether the Mishnah was written, cf. Strack, *Einleitung in den Talmud*, 5th ed., p. 9-16; Weiss, *Dor*, III, 2, n. 1. On the preference of oral to written teaching, cf. *J. Q. R.*, III, 296, note 2.

Commonwealth a body of law, later known as the oral tradition.<sup>2</sup> It consisted partly of interpretations of Scripture known as Midrash, made by the זקנים, the elders, and the סופרים who functioned as judges; of laws originally written, but for some reason not incorporated in the Pentateuch, cf. Neh. 8:14-15; of customs that germinate spontaneously in every community where there is social intercourse, and finally of legislative enactments (תקנות), which come into being to remedy prevailing abuses or to meet new conditions.<sup>3</sup>

It need not be supposed that during the epoch of the Soferim the immense accretion of Jewish law and ritual was all transmitted orally.<sup>4</sup> We know that the Sadducees had a written code called ספר גזירתא.<sup>5</sup> Incidentally, it may be remarked that the Sadducees only objected to the oral law of the Pharisees and not to all the unwritten tradition, as Josephus<sup>6</sup> would have us believe, as may be inferred from the fact that they observed customs not implied in Scripture.

Temple manuals<sup>7</sup> were undoubtedly in circulation for the use of priests to guide them thru the intricacies of ceremony; handbooks of procedure and transcripts of court decisions<sup>8</sup> for the benefit of the judges were also set down in writing.

Due to economic, social, political and religious causes, divergencies in practice and doctrine had become a significant feature in Jewish life before the beginning of the common era, and these differences are amply reflected in the disagreements between the schools of Hillel and Shammai.<sup>9</sup> Consequently a formulation of

2. The expression תורה שבעל פה (Weiss, Dor, I n. 1; Lerner, Hoffmann Festschrift, p. 347-8) as well as the phrase תורה שלא בכתב (Ginzberg, Ginze Schechter, I, 21 n. 1) are late.

3. cf. Moore, Judaism, I, 251ff.

4. Friedmann, Introduction to Mek., p. XXXVIII, first suggested that the writing of the oral law was prohibited at the time when the Sadducean Code was introduced, cf. Lebrecht, Handschriften des Babylonischen Talmud, Berlin 1862, p. 5-6; also Joel, Blicke, p. 59; Ginzberg, Unbekannte Sekte, p. 150, note 1.

5. cf. Joel, Blicke in die Religionsgeschichte, I, 58-9; Lauterbach, Kohler Volume, p. 186, n. 1; Moore, Judaism, I, 261, but cf. Zeitlin, Megillat Taanit, p. 83; and Bruell, Jahr. 7: 103.

6. Antiq. 13, 10, 6, cf. Joel l. c. p. 59, n. 2.

7. Subsequently incorporated into the Mishnah.

8. cf. Kaminka, הצופה 1925 for court decisions in the Mishnah.

9. cf. Ginzberg, מקומה של ההלכה בחכמת ישראל. Not all of the views of the two schools have come down, and in later times, uncertainty prevailed as to the exact nature of their dissensions, cf. Jeitiles in J. J. L. G. XVII, Hebrew part, p. 1, et seq.

ritual and law became a matter of prime necessity for the scholar who sought guidance amidst the conflicting views of the two schools. Thus, the First Mishnah *משנה ראשונה* came into being. Of this epitome of Jewish practice and observance, little is known except that there were two recensions of it, one by each of the two schools. The laws were given tersely, without mentioning the names of authorities and without citations of Biblical verses,<sup>10</sup> from which the traditions were supposed to have been derived, and arranged sometimes arbitrarily by external formulae, such as the *אין בין* Mishnahs.<sup>11</sup> Fragments of the First Mishnah have been preserved in our Mishnah.<sup>12</sup>

At Jabneh<sup>13</sup> at the time when R. Gamliel II. was deposed as Nasi and R. Elazar ben Azariah<sup>14</sup> succeeded him, several sweeping changes were affected in the method of teaching of the law and in the matter of practice. Hitherto, even contradictory views by individual authorities in regard to any point of law or particular rite were transmitted anonymously, which made confusion worse confounded. A critique of the state of Jewish learning at this time is preserved in Tosef. Eduyot I.1, *משנכנסו חכמים בכרם ביבנה אמרו* עתידה שעה שיהא אדם מבקש דבר מדברי תורה ואינו מוציא מדברי סופרים ואינו מוצא . . . שלא יהא דבר מדברי תורה דומה

10. Hence we find frequently early authorities at variance as to the Scriptural basis of the halakah, cf. Yeb. 70a; Bassfreund, *Monat.* 51, p. 314-315; cf. also T. Sanh. VII. 7 *הלכה ומדרש נוקטין למדרש*.

11. cf. Ginzberg, *Hoffman-Festschrift*.

12. cf. Hoffmann, *Die erste Mishnah*. Albeck places the first redaction of the Mishnah in the time of the famous synod at Jabneh. (*Untersuchungen*, 108-109, as does Graetz, *Geschichte*, IV, 36 and Oppenheim, cf. Bruell, *Jahr.* 7: 100). Albeck's critique of Hoffmann has been ably refuted by Zewi Karl in his *משניות פסחים*, Lemberg 1925, p. 93-103. The view of Halevy, I c, 204ff. who traces the origin of the Mishnah to the Men of the Great Synagogue, (cf. Chajes, *הגהות* to Yeb. 9a) is too fantastic to require further comment. According to R. Hoshaya, (Y. Meg. III, 73d) in temple times there were schools for the study of the Bible and Mishnah, but here Mishnah probably is identical with the oral law, cf. Pesikta, ed. Buber, p. 121b. Rosenthal's hypothesis that the Mishnah dates back to the time of Simon b. She-tach, and that its oldest components are antisadducean, has been overthrown by the arguments of Hoffmann, (*Mag.* 17: 322-24; 20: 77-82). According to Lauterbach, *Midrash and Mishnah*, the Mishnah form was introduced in the time of Jose b. Joezer. Lerner ascribes the beginning of the Mishnah to Hillel, (*Mag.* XIII, 1-12). Frankel (*דרכי המשנה*) p. 15) makes R. Akiba the founder of the Mishnah.

13. On Jabneh as a center of learning before the destruction of the Temple cf. Karl, *העולם* 1925, nos. 48 and 49.

14. Ber. 28a.

לחבירו אמרו נתחיל מהלל ושמיא. This passage, as it reads, is admittedly obscure<sup>15</sup> and incomplete and can be understood only in the light of the parallel passages. In the other sources, it is explicitly stated that the author of this statement was R. Shimon b. Yohai, who had first-hand knowledge of the state of affairs at this epoch, as he himself was not only present at Jabneh, but it was he who precipitated the discussion which finally led to the displacement of R. Gamliel.<sup>16</sup>

From the parallel passages we learn that there were two chief defects in the compilation of the law at this period. First, the opposing views were transmitted in regard to a particular law or rite, with no directions as to how one was to determine which of the conflicting opinions was to be adopted in practice.<sup>17</sup> Secondly, it was impossible without great difficulty, to ascertain the view of the scholars upon a certain topic of law, as the halakah was not arranged logically or according to subject matter. Statements were grouped together because of resemblance or contrast, on account of the fact that they employed common phrases, or because they were of a single author, or were classed together arbitrarily, according to numbers. Hence, halakot relating to entirely different topics were put together, while laws pertaining to one subject were found in many different places.<sup>18</sup>

That the Tosefta makes these two criticisms becomes quite clear if we realize that the present text is incomplete, and that by supplying four words<sup>19</sup> from the parallel texts we obtain the original text, which reads as follows . . . עתידה שעה שיהא אדם מבקש דבר . . . מדברי סופרים ואינו מוצא דבר ברור . . . שלא יהא דבר מדברי תורה (דוממה 20) לחבירו בתקום אחד.

15. For no reason is given why one will not find what one will seek.

16. Ber. 28a, as to the historicity of this statement, cf. Bacher, *Agada d. Tan.*, II, 70.

17. cf. Sifre Deut. 48, *Midrash Tannim*, p. 43 איש פלוני אוסר איש פלוני מתיר איש פלוני מטהר ולא ימצאו דבר ברור הלכה ברורה ומשנה דבר ברור is the original phrase and was elaborated into הלכה ברורה in Shab. 138b, cf. also Friedmann, *Pseudo-Seder Eliahu Zuta*, p. 14.

18. Shab. 138a שלא ימצאו הלכה ברורה ומשנה ברורה במקום אחד. The underlined words are found only in this passage.

19. That is דבר ברור and במקום אחד, see notes 17 and 18.

20. The word דוממה is used here in the sense of belonging together; cf. a similar use of this term by Sherira when speaking of our Mishnah. (Letter ed. Lewin, p. 29). ודבריה מחוברים חבור יפה כל דבר ודבר עם מה שדומה לו.

These were the two major difficulties which the scholars at Jabneh had to contend with. However, it was to the task of deciding controverted halakah, to which they addressed themselves first, which was the more urgent for the moment, and we are informed that all the uncertain halakot, that existed at the time, were clarified.<sup>20a</sup> The first step towards securing unity in the Jewish community was to swing over all of Israel to the practice of Bet Hillel.<sup>21</sup> Secondly, it was necessary to collect all the halakot according to the authors in order to facilitate this matter. Part of this collection is preserved in various parts of the Mishnah and in the treatise of Eduyot,<sup>22</sup> which contains also some later material. Hence the Tosef. continues נתחיל מהלל ושמואי.

The second problem, namely the systematic classification of the halakah could not be done conveniently by a group of scholars, as each one would have different notions of his own concerning arrangement. This task was later undertaken by R. Akiba. While certain treatises were in existence before the time of R. Akiba,<sup>23</sup> the great bulk of the halakah was not classified according to content.<sup>24</sup>

Perhaps the present arrangement of the Mishnah according to orders and treatises is due to R. Akiba.<sup>25</sup> The statement in Tosefta

20a. Ber. 28a. וְלֹא הִיטָהּ הַלְכָה תְּלוּיָהּ בְּבֵית מִרְיָשׁ שֶׁלֹּא פִּירְשׁוּהָ

21. This was accomplished gradually, see Er. 13b, Tosef. Yeb. I, 13, Eduy. II, 2, Yeb. 9a אינה משנה כ"ש במקום כ"ה אינה משנה. In Amoraic times a Mishnah containing the views of B. H. was considered a *משנה*. cf. Kid. 54b. For the partial observance of Bet Shammai's views at a subsequent period, cf. Buechler in Bloch Festschrift, Hebrew part, Weiss, Dor II, 78ff; Guttman, Einleitung in die Halachah, p. 43ff.

22. Called *בְּחִירָתָא*, a selection of halakot as was first pointed out by Hoffmann, *Die erste Mishnah*, p. 50, note, cf. Albeck, *Untersuchungen*, 117. In Amoraic times a Mishnah taught in Eduyot carried more weight than one found elsewhere in the M., see Kid. 54b, but cf. Zeb. I, 3. On this treatise cf. Rappaport חמור 1841, p. 176ff. Lewy, *Abba Saul* 13ff; Albeck, 108ff; Strack, p. 166; Marx, T. Q. R. N. S. XIII, 352-3.

23. cf. Bruell, *Jahr. VII*, 100 and Hoffmann, *Einleitung in die halachischen Midraschim*, p. 25; Albeck, *Untersuchungen*, p. 119-120, see also Er. 11b, R. Joshua was בקי בהלכות כלאים.

24. cf. Oppenheim, *בית תלמוד*, VI, 174.

25. It is possible that M. Hag. I, 8 and T. Erubin end contain an allusion to the arrangement of the M. into orders הרינין = נזיקין (According to Lewy, the name of this order in Tannaitic times was סהרות = המהרות והטמאות קדשים = העבודות דיני ממונות (cf. also M. Sanh. IV, 2,) and עריות = נשים Bruell, *Jahr. VII*, 100 seems to imply that this M. goes back to the time of R. Yohanan b. Zaccai, cf. also *Jahr. IV*, 168 and Rosenthal, *Zusammenhang der Mischnah*, I, 1918, p. 129-130.

Zabim I.5 כשהיה ר' עקיבא מסדר הלכות לתלמידיו, as well as Yer. Shek. V.48c (וְאֵנֹכֶה 27) מדרש הלכות (26) give us no clue as to the manner in which he arranged his Mishnah. However, R. Akiba's accomplishments were rated very highly, for he was regarded as one of the three who saved the Torah from oblivion.<sup>28</sup> In Abot di R. Nathan Ch. XVIII<sup>29</sup> R. Akiba is compared to a workman who collects all kinds of grain and when he returns home he separates wheat, barley, beans, and lentils כך עשה ר' עקיבא ועשה כל התורה מטבעות (מטבעות 30).

R. Akiba collected the halakah and arranged it according to subject matter, and secondly, he formulated the halakah in precise and fixed terminology of his own.<sup>31</sup> Previously, various tannaim transmitted the same law in different forms of expression. R. Akiba differed with R. Ishmael, not only in regard to the interpretation of the law, but as to its formulation.<sup>32</sup>

Most likely his disciples who compiled Mishnah collections<sup>33</sup> were greatly influenced by his method and system, but we have no means of ascertaining to what extent they accepted his arrangement. We know that they deviated from him in regard to the text

26. מתניתין מאן תקן is a synonym for מסדר, cf. also Yeb. 64b מאן תקן and Y. Pes. IV, 30d המשנה את המסדר; T. Shab. I, 12 מתקנין, Shab 13a מסדרין; Y. Shab. I, 3 מתקנין see also Albeck, M.G.W.J. 69, p. 410 n. 1 and Bacher, Terminologie, I, 204.

27. מדרש as opposed to הלכות was the older name for laws arranged without reference to the Bible, and was later supplanted by the term משנה. At the time of R. Meir and R. Judah משנה had not as yet acquired definitely the meaning of systematized halakah, as is evident from Kid. 49a. איזה משנה ר' מאיר אומר הלכות ר' יהודה אומר מדרש cf. Frankel, דרכי המשנה p. 8 Hoffmann, Magazin XI, 22.

28. cf. Sifre Deut. 48, (ed. Friedmann, p. 84b). Concerning his great reputation, cf. Yeb. 16a.

29. Schechter's ed. p. 67, see also the important variants in Rashi's quotation to Git. 67a, s. v. אוצר כלום.

30. This is the reading in a MS. cited by Schechter in note 5 and Rashi, l. c. In his text, the reading is טבעות, which is incorrect.

31. For the meaning of מטבעות cf. the expression in the Talmud מטבע של ברכות and מטבע בניטין. Git. 80a. According to Rashi, Git. 67a מטבעות implies that R. Akiba divided the halakah into Midrash, Sifre and Sifra, but this view is not plausible, cf. Blau, in Magyar Zsidó Szemle X, 1898, p. 365-369.

32. R. Akiba did not introduce the arrangement of the halakah according to numbers, cf. Horowitz's note in Graetz, Geschichte, IV, 397, note 1 and Bet Talmud II, 241-242.

33. Cf. Lewy, Mishnah Abba Saul, Bassfreund, M. G. W. J. 51, p. 316-319. In regard to the treatise of כלים and עוקצין see also Albeck, l. c. p. 118. On R. Shimon, cf. Git. 67a.

of the Mishnah. R. Meir, R. Judah and R. Yose frequently had different versions of the controversies between Bet Hillel and Bet Shammai. They also differed with him in regard to the halakah.<sup>34</sup>

Inasmuch as R. Meir was also a disciple of R. Ishmael,<sup>35</sup> it may be assumed that he introduced views of R. Akiba's rival into his own Mishnah.<sup>36</sup> In Mishnah Kilaim III.7, R. Ishmael's view as transmitted by R. Meir is found alongside that of the versions handed down by ר' יוסי בן החומא אפרתי. Undoubtedly this statement of R. Meir emanates from his Mishnah. According to the Amoraim, when R. Meir incorporated R. Ishmael's views into his Mishnah, he mentioned him by name, whereas Akiba's views he inserted anonymously.<sup>37</sup> Some traces of R. Meir's Mishnah have been preserved in the Tosefta. Tosefta Er. II.-III. presuppose the following sequence in Mishnah Erubin, I., 7, עושיין פסין, II., 1, בב' עשין לחיין I., 8, שירא שחנתה. That the order of the Tosefta is that of R. Meir's Mishnah is evident from the following Er. 15b, תניא רבי מאיר אומר כל דבר שיש בו רוח חיים אין עושין אותו לא דופן לסוכה ולא לחי which indicates quite clearly why the Tosefta cites עושין פסין after לחי. From M. Kilaim II., 11, which is most likely a quotation from R. Meir's Mishnah, we learn that R. Meir occasionally preferred the view of others to that of his own, as incorporated in his own collection.<sup>38</sup> Similarly, R. Yose quoted R. Meir's view in his Mishnah, see Hullin 38a.

It has been generally assumed that R. Meir's Mishnah has been the model for R. Judah ha-Nasi's work. The source of this hypothesis is Sherira's interpretation of the oft-cited statement of R. Yohanan, Sanh. 86b. עקיבא דרבי עקיבא . . . מאיר . . . וכולהו אליבא דרבי עקיבא. which reads as follows: ובאותו דרך דהוה מתני ר' מאיר לתלמידיו: אותה גמרא אחז רבי וקבעה לאתנני לכולי עלמא ור' מאיר אחז דרך

34. For R. Judah, cf. Kil., III, 3; for R. Meir, cf. T. Yeb XIV, 5; Orlah, III, 7; Ber. 9b; for R. Yose, cf. Maasrot III, 5; Bek. II, 7.

35. אמר תלמיד אחר לפני ר' ישמעאל refers to R. Meir, Er. 11b.

36. So Hoffmann, Mag. XI, 20-21. For R. Judah, cf. M. K. 24b.

37. Yer. Ber. II. 1 ר' מאיר יתיב דריש ואמר שמועתא מן שמיה דר' ר' ישמעאל ולא אמר שמועתא מן שמיה דר' עקיבא א"ל כל עלמא ידעין דר' ר' מאיר תלמוד, cf. also Oppenheim, II. 313.

38. For other traces of R. Meir's Mishnah, cf. Lewy, Abba Saul 13ff.; Hoffmann, Mag. XI, 91-92; Schwarz, Tosefta Zeraim, p. IX-X.

הגמרא שלו מר' עקיבא רבו ור' עקיבא קבלה מרבותיו הראשונים (39).

We do not know the source for Sherira's explanation, but it seems likely that it is the result of inference. He undoubtedly observed, as the amoraim had before him, that many anonymous statements in the Mishnah are actually opposed to the view of R. Meir, and hence he could not take R. Yohanan's remark literally. However, his interpretation is philologically inadmissible.<sup>40</sup> The expression מאיר סתם מתניתין ר' occurs twice in the Talmud, the term סתם ספרא ר' יהודה<sup>42</sup> and is taken literally by the amoraim.

In view of the fact that great importance has been attached to this statement for the understanding of the formation of the Mishnah, we propose to discuss the following questions in connection with this passage. First, is the tradition which assigns this statement to R. Yohanan unimpeachable? Were all the later amoraim familiar with the tradition? Did they all understand it the same way? If this statement is unauthentic, how did it originate?

That all authorities were not agreed as to the contents of R. Yohanan's statement in respect to this matter is evident from the Yerushalmi,<sup>43</sup> where we read, אמר ר' יוחנן כל מקום ששנה סתם משניות דרבנן עד שיפרש לו רובו רבי שמעון בן לקיש אומר כל סתם משניות דרבי מאיר עד שיפרש לו רובו אמר ר' זעירא (44) קומי ר' יוסי לא דרבי שמעון בן לקיש פליג אלא דו חמי רוב סתם משניות דר' מאיר.

In this passage the opposite view is attributed to R. Yohanan.<sup>45</sup>

39. Letter, (ed. Lewin, p. 26-27), cf. Monat. 69: p. 409.

40. The term סתם מתניתין occurs frequently in the Talmud, meaning anonymous Mishnah, which is the only sense it can have here.

41. Er. 96b, Git. 4a.

42. Shab. 137a, Yoma 41a, Kid. 23a, Shebuot 13a. The terms סתם ספרי and סתם תוספתא do not occur elsewhere.

43. Yeb. IV, 11, cf. Duenner, M. G. W. J., 1873, p. 329.

44. For R. Zeira's statement, cf. Frankel, המשנה p. 212, note 7, Halevy Dor, II, 113-114.

45. Lewy Abba Saul, p. 11, n. 14, so also Hoffmann, Einleitung in die halachischen Midraschim, p. 15, note 1, cf. Schwarz, Tosifta B. K., p. V. n. 3. Incidentally it may be remarked that the statement in the Babli is not in its original form, for R. Yohanan, a Palestinian, would not use the term ספרא but ספרא כהנים (cf. Hoffmann, l. c.). Similarly, סתם ספרי ר' שמעון... וכולהו אליבא דר' עקיבא, is hardly correct, for R. Shimon follows the school of R. Ishmael (cf. Lewy, l. c.). In the light of Tosef., Kil. II 12 ישמעאל ר' עקיבא it is difficult to explain סתם תוספתא דר' עקיבא וכולהו אליבא דר' עקיבא. Similarly in T. Shab., II, 4 סתם תוספתא follows R. Eliezer in opposition to R. Akiba. As for the statement in the Yer., Lewy believes that it is not based upon tradition, but it is an inference, hence the statement of R. Zera, cf. also Bloch, M. G. W. J., XIII, 1864, p. 127-128.



Lewy is inclined to believe that the version of the Yerushalmi is the more correct one, which ascribes to him the view **סתם משניות**, **הלכה** for it would be in accord with his other principle **הלכה כסתם משנה**.

Frankel,<sup>46</sup> assuming the trustworthiness of the statement in the Babli, explains **סתם מתניתין ר' מאיר** as follows: R. Meir collected all the statements which were given anonymously<sup>47</sup> in the academy, and included them in his Mishnah. Hence, the Talmud holds that some are actually his own views,<sup>48</sup> while others were not.<sup>49</sup> Frankel himself felt the weakness of this theory, inasmuch as it would not explain why the **סתם משנה** frequently gives R. Judah or some other Tanna's version of the controversy between Bet Hillel and Bet Shammai and R. Meir's version is only found in the Tosefta or some baraita.<sup>50</sup> As R. Yohanan is the author of the statement **סתם מתניתין ר' מאיר**, it is well to note how he interprets the anonymous Mishnah.

In Yeb. 27b. R. Yohanan says:<sup>51</sup> **אחיות איני יודע מי שנאן**, referring to M. Yeb. III, 1<sup>52</sup> and in Hul. 55b he says **אל תקנימני**, **אל תקנימני** which sounds rather strange, if he is the author of the statement **סתם מתניתין ר' מאיר**. In Pes. 55a R. Yohanan explains a **סתם משנה** in accordance with R. Judah in opposition to R. Meir on the basis of a baraita.

There are a number of statements by R. Yohanan referring to anonymous Mishnahs, such as Meg. 26a **ב"ר מנחם**; **זו דברי ר' מנחם**;

46. **דרכי המשנה**, p. 212.

47. cf. Bruell, *Central Anzeiger*, p. 76, n. 1; Zunz, *Jubelschrift* 103, n. 42.

48. cf. Er. 96b, Git. 4a, 9a; B. M. 104a.

49. cf. Ket. 18b, 19a; Bek. 28b.

50. Schwartz's view (*Tosefta B. K.*, p. V.) that **סתם מתניתין** is to be taken as **סתם מתניתין** is incorrect.

51. The same expression is used by R. Judah b. R. Shimon in a discussion in B. B. 115a, where a different view from that of the **סתם משנה** is cited as R. Meir's, by R. Elazar in B. M. 51a, and by R. Huna in B. B. 141b. The assumption of R. Yohanan in Bek. 18a that an anonymous statement in M. Bek. II 7 represents R. Meir's view is an inference from a similar statement in II 8 given in his name.

52. This Mishnah happens to represent the opinion of R. Eliezer, as is to be seen from Eduyot, V, 4. Noteworthy is the fact that a later amora in Yeb., 18a tried to assume that this Mishnah might represent the view of R. Meir, evidently because he was acquainted with the notion of **סתם מתניתין ר' מאיר**.

53. R. Yohanan here and Y. Bik. 64b was influenced by his teacher R. Yannai in taking this attitude, cf. Shab. 140a.

(54 סתם משנה or יומי סתימתאה Hul. 41b, where he assigns the משנה to R. Elazar; B.B. 27b, to the רבנן; in Shab. 157a to R. Jose b. R. Judah; Hul. 55b to R. Shimon, and other passages. But these statements would not necessarily contradict the view מאיר ר' מתניתין, for R. Meir had in his Mishnah many statements which he held in common with the rest of the Tannaim.

As is well known, the authorship of anonymous statements of the M. is frequently discussed in the Talmud and we find the term מתניתין and its equivalents quite often. For the present purposes these amoraic statements may be divided into four classes. First, there are remarks that certain anonymous Mishnahs are in accordance with a certain Tanna other than R. Meir, and no indication is present as to R. Meir's opinion on the M. in question. For example, in Pes. 86a in regard to the Mishnah it is said <sup>55</sup> 'מתניתין מני ר' יהודה היא דתניא וכו'. From the baraita cited there it is proven that the view expressed in the anonymous Mishnah is that of R. Judah in opposition to that of R. Shimon. R. Meir's view is not given in the baraita and it is possible that R. Meir shared R. Judah's opinion.

Secondly, there are a number of amoraic statements where the anonymous Mishnah passages are said to be in accordance with a certain Tanna in direct opposition to R. Meir. Thus e. g. in Pes. 72b <sup>56</sup> and in the baraita cited both R. Shimon and R. Meir's views are given, whence it is clearly seen that the M. does not represent R. Meir's opinion.

Thirdly, there are many instances where it is asserted that a given anonymous Mishnah represents the view of R. Meir, because a similar opinion to which his name is attached is found in a baraita or in another Mishnah. Thus, in Yeb. 34 a Rab says that the anonymous view is <sup>57</sup> 'ר' מאיר היא דתניא. The fact that a baraita

54. cf. Kohut, Bruell Jahr. VII, 55-56.

55. For other examples, cf. R. Zera, in Ned. 18b, Ada b. Ahawa in Ned., 32b, 33a.

56. For other cases, see also Shab. 39b, Ned. 11a, 63a, Yoma 59a, B. K., 86a, B. B., 65b, 156b. In Ket., 95a R. Zera in the name of R. Hisda explains M. Git. V, 6 as R. Judah's view in opposition to that of R. Meir, which is to be found in M. Yeb., X, 6. The Talmud objects to this interpretation on the ground that Rabbi would be inconsistent. <sup>57</sup> 'ר' מאיר וסתם לה התם כר' יהודה. cf. also Pes. 21a.

57. For Rab, cf. Pes. 43a, Ket. 40b. For Samuel, cf. B. M. 55b, Yer. Maasrot, II, I and for other amoraim, cf. Ned., 13a.

or another Mishnah must be adduced by certain amoraim, where R. Meir is explicitly cited, would imply that these scholars did not hold the view **סתם מתניתין ר' מאיר**. This is borne out by the fact that in Er. 95b, when the Talmud assumed that M. Shab. XVI. 4 represented R. Meir's view, the question was raised **וההיא סתמא רסתני עלה**. To this query the answer is given **ממאי דר' מאיר היא** and a baraita is quoted where R. Meir's name is actually given.

Lastly, there are a few passages whence it may be derived that some amoraim held the view that the anonymous statements in the Mishnah reflect the views of R. Meir. Besides Er. 96b and Git. 4a,<sup>58</sup> where it is expressly stated that the anonymous view is R. Meir's because **סתם מתניתין ר' מאיר**, two other passages may be cited where the anonymous Mishnah is assumed to be R. Meir's; namely Taanit 18a, where Samuel<sup>59</sup> says **הלכה כרבי מאיר** referring to M. Taanit II. 8, and Git. 9b, where R. Nahman assumes that M. Peah III. 8, quoted in Git. 8b, presents the opinion of R. Meir. However, even in the last two passages, it cannot be positively asserted that these amoraim knew of the principle **סתם מתניתין ר' מאיר**, although in these particular instances they assume that the anonymous M. is that of R. Meir. It is possible that their statements are based upon some positive tradition, or inferred from some baraita, not cited in the Talmud, where R. Meir's name is mentioned.

The notion entertained by the latter amoraim as to the nature of a **סתם משנה** is reflected also in their discussion of the principle attributed<sup>60</sup> to R. Yohanan<sup>61</sup> **הלכה כסתם משנה**, which he violated in a number of instances.<sup>62</sup> In Yeb. 42b R. Yohanan is said to have decided against the **סתם משנה**, because the latter represents the opinion of an individual.<sup>63</sup> When two anonymous Mishnahs contradicted one another, R. Yohanan would decide ac-

58. **מהררינן אדר' מאיר דסתם מתניתין ר' מאיר**. Inasmuch as the Talmud in this instance ultimately proves that this M. is not the view of R. Meir, it would appear that the amora holds an opinion similar to R. Zera's (Y. Yeb., IV, 11) that only **מאיר ר' מאיר**.

59. cf. above note 57 where passages are cited by Samuel which presuppose the contrary.

60. cf. Men. 52b, Hul. 43a, where it is said that not all of the amoraim ascribed this view to him.

61. Similarly, the statement by Rabin in the name of R. Yohanan **הלכה כסתם** would show that he did not hold **הלכתא כתנא קמא** משנה Shab. 54a., cf. Tosafot to R. H. 15b s. v. **שבקי רבנן**.

62. Shab., 46a and parallel passages.

63. **מכלל דיחידא פליג עליה**.

cording to the סתם משנה which represented the opinion of the majority.<sup>64</sup> Hence, according to these amoraim, the סתם משנה represented the view of an individual Tanna, not necessarily R. Meir, and sometimes it was the consensus of opinion of the majority.

Besides the ordinary interpretation of the statement מאיר סתם מתניתין ר' מאיר, i. e., the anonymous view is that of R. Meir, this phrase seems to have been understood by some later amoraim, as follows: סתם מתניתין ר' מאיר וכולהו אליבא דר' עקיבא. (The word סתם is a verb, and is to be translated as follows:) whenever the anonymous Mishnah is according to R. Meir, it follows R. Akiba. Hence the halakah is to be decided according to R. Meir, even if his views are opposed by his colleagues, such as R. Jose, R. Judah or R. Shimon. R. Papa<sup>65</sup> seems to have held this view, as may be inferred from the following passage in Sanh. 27b, מאי דעתך כרבי מאיר. ר' מאיר ור' יוסי הלכה כרבי יוסי. . . אמר ליה רב פפי הני מיילי היכא דלא סתם לן תנא כר' מאיר הכא סתם לן תנא כר' מאיר. The general principle is that when R. Meir's opinion is opposed by any of his three colleagues, R. Judah, R. Yose, or R. Shimon, R. Meir's view is disregarded. But if R. Meir's opinion is given anonymously, then it is accepted in the face of opposition of his colleagues.<sup>66</sup>

But R. Yohanan did not accept this interpretation, for we find him deciding against R. Meir,<sup>67</sup> even when his view is the סתם משנה. In view of the above, it is quite clear that the statement סתם מתניתין ר' מאיר could not have originated with R. Yohanan, nor was this principle known to all of the amoraim, neither did those who were acquainted with it interpret it in the same manner. It is possible that this statement was attributed to R. Yohanan through some mistaken inference.<sup>68</sup> For it is he who informs us<sup>69</sup>

64. Sanh., 34b סתמא דרביים עריף

65. That R. Papa did not hold סתם מתניתין ר' מאיר is evident from Pes. 59b. In Yoma 31b he is convinced by his pupils that the סתם there is not R. Meir's.

66. This is the source for Sherira, Letter, p. 37 Assaf דרכי התלמוד p. 5; cf. also Raba's remark in Pes., 13a who agrees with R. Papa.

67. cf. B. M. 33a, where he decides according to R. Judah, although R. Meir's view is given anonymously. Similarly, in Taan. 18a he decides according to R. Yose, over against the סתם משנה, which is assumed to be the view of R. Meir's.

68. cf. Shab., 39b בפירוש שניע כך או מכללא שמייע כך

69. Yer. Nazir IV, 6 and parallel passages.

that the enumeration of the twenty-four differences between Bet Hillel and Bet Shammai, where the latter are more lenient,<sup>70</sup> go back to R. Meir, thus making Chapter IV. of Eduyot, which is entirely anonymous,<sup>71</sup> the Mishnah of R. Meir.<sup>72</sup> Perhaps some later amora erroneously deduced<sup>73</sup> from this remark of his that he held that all anonymous Mishnahs were to be ascribed to R. Meir.

To sum up, the statement *מתניתין ר' מאיר* did not emanate from R. Yohanan (in the Yerushalmi this view is ascribed to Resh Lakish), but originated with some later amoraim as a result of a statement of R. Yohanan concerning the *מתן משנה*. It was not known to all of the amoraim, and it seems that they did not all interpret it the same way.

In view of this conclusion, R. Sherira's opinion<sup>74</sup> that R. Meir's Mishnah served as a model for our Mishnah must be abandoned. Furthermore, Rabbi was not a pupil of R. Meir<sup>75</sup> on account of the strained relations that existed between him and his father, R. Shimon b. Gamliel. As a matter of fact, R. Judah's views are cited more often in the Mishnah than those of R. Meir, which would imply that he drew upon R. Judah's Mishnah even more. Because of the feud that existed between them, we are told that R. Meir's views were not given in his name,<sup>76</sup> but were introduced as *אחרים*<sup>77</sup>. When R. Shimon was studying the Mishnah with his father, R. Judah and came across the passage *אחרים אומרים אלו היה תמורה לא היה קרב* (Bek. IX, 8) he was much astonished. Finally,

70. Referred to in Tosefta Eduyot, II, 2, but incorporated in Mishnah Eduyot, IV. On the discrepancy between the number mentioned in the Tosefta and the actual number found in the Mishnah, see Lewy, Abba Saul, p. 13.

71. Except Mishnah, 6, which is a later gloss, cf. Lewy, l. c.

72. cf. the statement of R. Huna in the name of Rab in Yer. Git. VIII. 5 *מאיר חוץ משינה שמו ושמה*.

73. We find later amoraim transmitting incorrectly the views of earlier teachers, cf. Shab., 63b *לחזו דבריהם שחזקו להו דבריהם*. *שאמרתי לכם טעות הם בירי ברם כך אמרו בשם ר' יוחנן*. The amoraim differed as to whether R. Yohanan actually held the view *הלכה כמתן משנה* cf. above note 60; see also B. B., 154b.

74. Based upon the statement *מתניתין ר' מאיר*.

75. Er. 13a. For the teachers of Rabbi, cf. Zuri *הנשיאות* שלטון II, 20-23. On R. Elazar b. Shammua, cf. Halevy, l. c. 806-808.

76. Hor., 13b-14a.

77. On the *אחרים אומרים* in the baraitot, cf. Wellesz in Bloch Festschrift.

after being persuaded by his son, he changed the text to read אמרו משום ר' מאיר. From this passage it may be inferred that in the first recension of Rabbi's Mishnah, R. Meir was not mentioned by his name at all, except as אחרים, however, in his second recension,<sup>78</sup> all the statements with אחרים were eliminated. It is not likely that Rabbi would take R. Meir's Mishnah as a model, since he felt so keenly about the injury inflicted upon his father's honor<sup>79</sup> that he refused at first to mention R. Meir by name in his compendium.<sup>80</sup>

It is true that R. Meir's great learning was acknowledged by the Tannaim, including R. Judah, the Patriarch himself,<sup>81</sup> and the amoraim. R. Jose b. Halaftha praised him as a great, holy and modest man (Y. Ber. II. 7). Resh Lakish called him פה קדוש and extolled him as a great dialectician עוקר הרים וטוחנן זה בזה (Sanh. 24a). But just because R. Meir was so keen-minded, sharp-witted, and clever, his decisions were not always fit to be accepted as standard practice. R. Aha b. Hama tells us explicitly that although R. Meir was unrivalled in his generation, yet his views were not generally adopted in practice because his colleagues couldn't follow his sophistry.<sup>82</sup> Similarly, R. Meir's disciples were imbued with this spirit of casuistry to such an extent that R. Judah b. Ilai refused to receive them after their master had died, because they were more intent upon confusing him with arguments, then desirous of learning the law.<sup>83</sup>

Consequently, it is more likely that R. Judah the Patriarch drew upon all the compilations before him, not only upon the

78. What other changes he introduced besides those mentioned in the Talmud is difficult to ascertain, cf. Aptowitzer, M. G. W. J., 60 (1916): 173-174.

79. Hor., 14b. אמר ליה בני אדם שבקשו לעמוד כבודך וכבוד בית אביך... האויב תמו חרבות לנצח.

80. cf. Hul. 6b, where it is stated that Rabbi adopted the practice of R. Meir in regard to certain points.

81. cf. Er. 13a.

82. Er. 13b טהור וטהור על טמא שהוא אומר על טמא טהור וטהור על טמא וטמא, cf. also Er. 15a. In Yer. M. K., III, 81c, we are told that the sages wished to excommunicate R. Meir. According to Bernfeld in Ha-Asif, V, 41, R. Meir's halakah was not accepted because he was a pupil of Elisha b. Abuyah, see also He-Haluts, V, 72.

83. Kid., 25b מפני שקנטרים ולא ללמוד תורה הם באים אלא לקפחני בהלכות.

compendia of R. Akiba and his disciples, but also upon those of R. Ishmael and his school.

While the M. of R. Akiba served its purpose for the time being, the numerous differences of opinion that arose among his disciples, as well as the unsettled conditions of Jewish life since Akiba's day, made his compendium out of date.

The growth of rival collections of Jewish practice and ritual, none of which possessed more authority than the other, presaged the disruption of the Jewish academies. In order to halt the chaos and confusion which seemed inevitable, Rabbi undertook a fresh compilation of Jewish law and ritual<sup>84</sup> with the purpose of making it the authoritative source for Jewish practice. Rabbi was eminently successful in his endeavor by reason of his great scholarship and the tremendous prestige he enjoyed as a spiritual leader of the Jews.<sup>85</sup> Henceforth, it was the duty of every scholar to become familiar with the Mishnah<sup>86</sup> of R. Judah. This fact tended greatly to diminish differences and to promote a unifying influence although divergencies were not entirely abolished. The amoraim had many baraita collections which were utilized for the interpretation of the Mishnah.

As it was Rabbi's aim to provide a guide to practice, he set down the bulk of the law in the form of anonymous statements,<sup>87</sup>

84. מִתְנִיתִין מֵאֵן תָּקֵן רַבִּי, Yeb. 64b; cf. Halevy, I, e 866, 880 and Friedmann, Onkelos und Akylos, p. 90, note 1.

85. גִּטִּין, 59a מִיָּמֹת מֹשֶׁה וְעַד רַבִּי לֹא מִצִּינוּ תּוֹרָה וְגִדּוּקָה בְּמָקוֹם אֶחָד.

86. While it may be assumed that most of the amoraim learned the whole Mishnah, it was exceptional to have made an intensive study of the six orders. Hence, Rabbah and R. Papa (Ber., 20a, Taan, 24a) boast of having made a thorough study of the whole Mishnah. An intimate acquaintance with only four orders seems to have been the rule, cf. the remark of Ulla, the story of Resh Lakish in Meg. 28b, and the statement of Rabbah b. Abbahu, (B.M. 114b) לֹא מִצִּינוּ בְּאֶרְבַּעַה. Tosafot, 1. c. s. v. הִ"נּוּ רִתְנֵיָא maintain that the amoraim knew the six orders completely and Rabbah's observation refers to the Tosefta, cf. also Tosofot to Er. 78a, s. v. רִתְנֵיָא who remarked that the amoraim usually cite passages from the first and sixth orders of the Mishnah in abbreviated form, (cf. Geiger קְבוּצַת מֵאֲמָרִים, ed. Poznanski, p. 13, note\*). In regard to the statement that in Rab Judah's time only Nezikin was studied, see Weiss, Dor, III, 186-187. When Abimi forgot the treatise of Menahot he went to his pupil R. Hisda to refresh his memory, Menahot 7a, cf. also He-Haluts, V, 53; Schechter, Saadyana, p. 64, note 3.

87. Sometimes these statements were opposed to his own views, as expressed elsewhere in baraitot, cf. Halevy, Dorot ha-Rishonim, I. e. 821-822.

or as the view of the sages (חכמים אומרים)<sup>88</sup> signifying thus that they were the consensus of opinion of the majority of the scholars.<sup>89</sup> As there were many points of law concerning which Rabbi could not arrive at a decision, or did not desire to impose his own preference, he mentions the dissenting opinions, leaving it to the courts or the individual authority to decide between the conflicting views.<sup>90</sup>

The Mishnah was accepted by the amoraim as the authority<sup>90a</sup> for law and ritual on account of its intrinsic merits, and because of the power and prestige of the patriarch.<sup>91</sup> Rarely do the amoraim depart from the Mishnah in order to adopt the practice as set forth in the baraita.<sup>92</sup> The Mishnah found favor among the amoraim because they considered it, as Sherira<sup>93</sup> says, "an excellent textbook, well arranged,<sup>94</sup> accurate, clear, without being redundant, and precise." Some of the virtues of Rabbi's method were carried too far and became shortcomings. In his endeavor for brevity he frequently curtailed the sources at the expense of clarity, and his condensed statements were often self-contradictory,<sup>95</sup> or inconsis-

88. cf. Hul. 85a the statement of R. Yohanan ראה רבי דבריו של ר' מאיר באותו ואת בנו ושנאו בלשון חכמים on the חכמים, cf. Weiss, Dor, II, 184, note 2-3.

89. cf. Tschernowitz in Lewy-Festschrift and Ginsberg, Comptes Rendu, p. 9-11.

90. In case of conflicting opinions between contemporary courts in regard to a matter of halakah, the higher court overruled the lower court, see Eduyot, I, 5; cf. Geiger, Wissenschaftliche Zeitschrift, II (1836), 482-483, who was the first to explain this Mishnah correctly. The interpretation of this statement provoked a great deal of discussion in modern times, see the authorities cited in Wachstein, Die hebraeische Publizistik in Wien, p. 129, note 2 and Prof. Ginzberg's view in M.G.W.J. 1932 p. 527 note 2.

90a. Sanh. 32a. טעה בדבר משנה חזר

91. Bloch, Einblicke, p. 59 holds that the authority of the M. is to be explained by the fact that in the time of Rabbi, the patriarch alone ordained scholars, and hence he required the knowledge of the Mishnah, (Sanh. 7b).

92. Graetz, Geschichte, IV, 452-3; He-Haluts, II, 50; Lewy, Abba Saul, p. 4, note 2; Weiss, Dor, II, 71, note 6; Schwarz, Tosefta B. K., p. XII, Albeck, Untersuchungen, 84ff. and פתח יצחק I. 85.

93. Letter, ed. Lewin, p. 29, cf. also p. 70 and 37.

94. Schorr who discerned thirteen principles of arrangement in the M., considered R. Judah's compilation badly edited, but he failed to note that the ancients had different notions of system.

95. חסורי מחסרא Suk. 50a, Halevy I, e. 873.



tent.<sup>96</sup> He produced a work that is comprehensive but incomplete,<sup>97</sup> and retains very often the original wording<sup>98</sup> and arrangement<sup>99</sup> instead of recasting the materials he had before him.

The contribution of Rabbi to the Mishnah constitutes one of the most important and difficult problems connected with the formation of this compilation. As pointed out above, we do not possess previous codifications of the law, which might serve as a basis for comparison. The remarks of the amoraim in the Talmud are not very helpful for they were not interested in the literary compilation of the Mishnah. They occupied themselves frequently with the authorship of individual passages of the Mishnah which are anonymous or given in the name of the sages merely for halakic reasons.

The following may be assumed a priori. Rabbi is responsible for the selection of the material in the Mishnah, and for its general arrangement within the treatise. Many statements representing the views of individual authors were given arbitrarily in the M. in the name of the sages or anonymously<sup>100</sup> by Rabbi, because he favored that opinion. The arrangement of the material within the chapter in the M. differs considerably from that in the Tosefta, and in most cases the latter presents the older sequence. It cannot be decided with the materials available to us whether Rabbi is to be charged with the introduction of these changes, or whether he had already found them before him. As seems more likely Rabbi was not so much the editor as the compiler<sup>101</sup> of the Mishnah. As mentioned above, instead of working over the materials before him, he incorporated extracts from various sources, introducing at times only such modifications as were necessary for smooth transitions. Rabbi's method in compiling the M. may be best illustrated by the presentation of a brief analysis of a tractate that contains some very ancient materials alongside of recent accretions.

96. cf. תברא מי ששנה זו לא שנה זו Yeb. 30b, M. G. W. J. 36, p. 362-372, 452-456.

97. תנא ושייר, Suk. 50a. cf. also B. M. 51a.

98. אדם חייב לומר בלשון רבו, Eduyot I. 3.

99. משנה לא זזה ממקומה Shebuot. 4a, Hehaluts II. 83.

100. Rashi's view (B. M. 33b s. v. בימי רבי cf. also B. M. 86a s. v. סוף משנה) that Rabbi was the first to introduce the principle of סתם משנה and to arrange the materials according to treatises, cannot be accepted by critical opinion, cf. Bezah 2b.

101. Cf. Ginzberg, העברית המשפטית IV. 212, Halevy. Dorot ha-Rishonim Ie. 872 ff. and Albeck, Untersuchungen, p. 121

The Mishnah of Baba Kamma<sup>102</sup> may be divided into three parts:

- (a) Ch. I-VI., which deals with the laws of damage to property,
- (b) Ch. VII. 1-6,<sup>103</sup> IX.-X., which treat of the laws of theft and robbery, constituting a species of damage to property,
- (c) Ch. VIII. which sets down the laws concerning assault and battery, which is damage to persons. One would have expected the laws of theft and robbery to follow one another and that the laws of חבלות be placed immediately after the laws of robbery. It seems that such an arrangement is presupposed by M. Sanh. I. 1. דיני הנגזל והנחבל and also by M. Shebuot VII. 1 והנחבל בשלשה. On the other hand, it is possible that the sequence in B. K. is implied in M. Shebuot V. 5 חבלת בי . . . גנבת את שורי.

Of the first part of the treatise, M. I 1-3, and the original part of 4 constitute not only the oldest part of B. K., but one of the most ancient segments of the whole M.

M. I. 1a ארבעה אבות נזיקין השור והבור והמבעיר וההבער<sup>104</sup> forms the original part of this paragraph which enumerates the four chief groups of damages in the order in which they are expounded in Exodus: XXI. 28 - XXII. 5. A later scholar classified these four classes of damages according to a logical principle, the ox, the מבעיר, the fire, and the pit. The first two are inanimate beings, and the first three are movable, whereas the fourth (i.e. pit) is immovable.

Ch. II—VI., which discuss the four chief classes of damages enumerated in M. I. 1, are derived from two sources. The first source, i. e. M. II. 1-III. 7 discusses only two of the four chief damages, namely, שור (which includes קרן, שן, and רגל) in M. II. 1-5, and אדם = מבעיר in M. II. 6 - III. 7. Note that in this source the two chief damages שור and אדם = מבעיר are enumerated in the order in which they are classified in M. I. 1b by a later Tanna.

The second source, i. e. M. III. 8—VI treats of all four chief damages in the order set forth in M. I. 1a, namely (a) שור, in III. 8 - V. 4; (b) בור in V. 5-7; (c) מבעיר = שן in VI. 1-3; (d) אש in V. 4-6.

102. Cf. Tschernowitz שיעורים בתלמוד II, 24 ff.

103. M. VII, 7, is a later addition brought in because of T. B. K. VIII, 9.

104. The meaning of this word will be discussed later.

In the analysis of the M. proposed above we have assumed that <sup>105</sup>מבעיר and not מבעה is the original reading, as found in the current editions and the Vienna MS.<sup>106</sup> of T. B. K. IX, 1. As is well known, the old halakah frequently employed Biblical phraseology. The third type of damage was derived from Exodus XXII. 4 <sup>כי יבער איש שדה או כרם</sup> hence the term מבעיר was used to describe this kind of damage.

The term מבעיר was the reading that Rab and Samuel had before them. The text in B. K. 3b read originally <sup>רַב אָמַר מִבְעִיר זֶה</sup> רב אמר מבעיר זה השן and no verse was cited, as it was self-evident that the halakah was derived from Exodus XXII, 4. Among the later amoraim <sup>107</sup>there appeared the corrupt reading מבעה,<sup>108</sup> and they naturally could not understand the basis for the divergence of views of Rab and Samuel, and hence they sought out two Biblical verses which contained the root בעה to account for Rab and Samuel's opinions. That these verses are far-fetched was realized by Rab Mari and R. Zebid, who were familiar with the reading מבעה.<sup>109</sup> Similarly, the Yerushalmi only knew of the reading מבעיר, as may be proven from the discussion in the Talmud ad loc. where the verse <sup>כי יבער איש שדה או כרם</sup> is cited. If the reading were מבעה one would expect the Yerushalmi to quote a verse containing a word with the root בעה as the Babli does.

105. As was first correctly pointed out by Schorr in He-haluts I, 1852, p. 60. On the other hand, Pinneles, <sup>דרכה של תורה</sup> p. 97-98, considers the original reading, (and the root בעה means to pluck), so also Hoffmann in this commentary ad. loc. and Lewy, Interpretation I, p. 25, and Weiss, Hazofeh X, 1926, p. 144-158.

106. The reading מבעיר is also presupposed by the Mekilta di R. Shimon, p. 139, <sup>המעביר חייב לשלם</sup> and by the Mekilta of R. Ishmael, ed. Friedmann, p. 90a) <sup>וההבר ממונו וההבאר ממונו</sup> and Maimonides in his introduction to <sup>נזקי ממון</sup>, where he speaks of <sup>דין השור דין ההבער דין הבור דין הבערה</sup>.

107. It is doubtful whether Rab Judah in whose name it is said <sup>תנא שור לקרנו ומבעה לשינו</sup> (BK 3b) and Raba, who said <sup>תנא שור לקרנו ומבעה לשינו</sup> (K 4a) were already familiar with the reading מבעה it is possible that they read מבעיר and later copyists changed it to מבעה, for the question of the Talmud would apply to the reading מבעיר just as well.

108. Perhaps the reading arose as a result of a phonetic error, the ר in מבעיר being pronounced very softly, it sounded like מבעה.

109. BK. 4b. The reading מבעה that is found in Mekilta of R. Ishmael ed. Friedmann, p. 90b) and of R. Shimon, p. 142, is due to a copyist who was familiar with the late Babylonian reading, for as we have pointed out in note 106 both Mekiltas elsewhere presuppose the reading מבעיר.

Now that we have established the fact that the original reading was **מבעיר** we shall endeavor to explain the origin of the controversy between Rab and Samuel. From Ex. XXII. 4 **כרם כי יבעיר איש שדה או כרם** the old halakah derived a type of damages which it denoted by the vague term **מבעיר**. Already in Tannaitic times there arose differences of opinion as to the meaning of the word, as a result of the ambiguous verse from which it was derived. According to one school the verse refers to damage done by man to the property of another, the phrase **כרם או שדה כי יבעיר איש שדה או כרם** was understood to mean, if a man injures<sup>110</sup> a field or a vineyard, he is responsible only for damages of which he is the direct cause. This notion is implied in the second part of the verse. Thus we read in Mekilta di R. Shimon (ed. Hoffmann, p. 139) **כי יבער המבער חייב לשלם. מכאן אתה אומר הגנבים שפתחו את הדיר . . . ויצתה בהמה והזיקה הגנבים פטורים ובעל הבית פטור שנ' ושלח את בעירו אדם=מבעיר** From this passage it is quite clear that **מבעיר** is taken presupposed the same. Rab accordingly, when he says **זה אדם מבעיר** is following a Tannaitic tradition<sup>111</sup> and is not enunciating a view of his own.

Another Tannaitic school interpreted **מבעיר** as **שן ורגל**, as we read in Mek. of R. Ishmael (ed. Friedmann, p. 90a) **מה תלמוד לאמר כי יבער איש אלא בא הכתוב ללמדך שהשן מועדת לאכול הראוי לה והבהמה מועדת לשור בדרך הלוחה**.

The verse in Exodus was understood as follows: If a man shall cause a field or vineyard to be eaten<sup>112</sup> by letting his beast loose and it feed in another man's field. This view is presupposed in M. B. K. VI. 1-3<sup>113</sup> and the baraita cited in B. K. 2b and Yerushalmi

110. Cf. also Vulgate, Si laeserit quispiam agrum vel vineam, and Targum Jonathan (ed. Ginsburger, p. 138) **ארי יפקר גברא**, which render the verse in a manner implying that man is responsible for any kind of damage done to another's property.

111. Cf. also BK 4a **דתני קרנא ארבע אבות נזיקין ואדם אחר מהן** and M. I. 4 **והאדם** and Shebuot IV, 6 **ושהדליק גרשי** . . . where **מבעיר ואש** are presupposed.

112. The LXX translates **בער** and **יבער** by the same verb, Kata bosko and similarly the Peshitta uses the same word **נוכל**. The Targum (ed. Berliner) translates **יבער** by **יוכיל** and **ובער** by **וייכול**. These versions seem to agree with this Tannaitic view.

113. And in M. I. 1. b, since it uses the expression **שדרכן להזיק** **שדרכן**, which can only apply to animals.

I. 1. Consequently when Samuel interpreted מבעיר as שן he too was merely repeating an earlier Tannaitic explanation.

Above we have pointed out that M. II. 1—III. 7 are derived from one source which discussed only the two chief damages, namely שור and מבעיר = אדם. It happens that the M. has preserved an old text which served as the basis for the arrangement of the material in ch. II. 1 - III. 7, and that is M. I. 4. A close scrutiny of the latter will show that only שור (including קרן, רגל, and שן) and אדם are mentioned. Perhaps they are put in a class by themselves because they are both animate beings.

M. I. 4 in its original form contained seven phrases which were mere headings for paragraphs. The original text of the M. accordingly read as follows: חמשה תמין וחמשה מועדין, השן מועדת, לאכול את הראוי לה הרגל מועדת לשבר בדרך הלוכה ושור המועד ושור הבהמה אינה מועדת לא ליגח, חמשה מועדין, הואב והארי והדוב, והנמר והברדלס as may be inferred from T. BK. I. 4. The amoraim were misled in their interpretation of this Mishnah because the statement הואב etc., is placed at the end, but in the T. it is found after חמשה מועדין.

The next five points are elaborated in Ch. II. שן ורגל are discussed in Ch. II. 1-2. Note, however, the difference in sequence. M. I. 4, which has שן and then רגל is derived from the same source as Mekilta of R. Ishmael,<sup>115</sup> and R. Shimon,<sup>116</sup> whereas M. II. 1-2, which has רגל and then שן follows the baraita in the Talmud,<sup>117</sup> which derives רגל from ושלח and שן from ובער.

The שור המועד is explained in M. II. 3—4; שור המזיק in M. II. 5, and lastly אדם in M. II. 6, to M. III. 7. In the Talmud B. K. 31b Samuel explains the damages in Ch. III 1-7 as belonging to the category of בור, but this is not the Tannaitic view.

114. From the T. it is clear that הנחש was not in the Mishnah, cf. also M. B. M. VII, 9 where only five vicious animals are mentioned: on the other hand, in M. Sanh. I. 4, six are enumerated.

115. Ed. Friedmann, p. 90a.

116. Ed. Hoffmann, p. 140.

117. B. K. 2b, Yer. I. 1.

The use of phrases here as chapter headings is not unique, for we find it also in M. Nedarim I. This first paragraph of the tractate contains four very old halakot which are discussed later on. The first statement כל כנוי נדרים is explained in M. I. 2. The second statement, which antedates R. Akiba, informs us that there are two kinds of vows of abstinence: one by which one vows to abstain from having any benefit from his fellow, which can be expressed in any of the three ways, מודרני ממך, מופרשני ממך, מרוחקני ממך. The second form of vow consisted of a solemn promise to refrain from eating or drinking at the home of one's fellow, שאני אוכל ש This brief statement is taken up in Ch. IV. 1, which reads אין בין המודר הנאה מחבירו למודר המנו מאכל אלא דריסת הרגל וכו'.

The third halakah reads כנדרני רשעים נדר בניזיר ובקרבן ובשבועה. This passage is to be translated as follows: Vows <sup>118</sup> of the wicked are of three kinds; solemn promises to abstain from certain things on condition that one becomes a Nazirite<sup>119</sup> if the vow is broken, vows containing the expression שבועה זו<sup>120</sup> קרבן. The expression נדר בקרבן ובשבועה is not elaborated any further, but נדר בניזיר is discussed in M. I. 3-II. 4.

The next halakah לא אמר כלום כנדרני כשרים<sup>122</sup> meant that certain vows made by pious have no validity because they are made with special permission. This statement is explained in M. III. 1-4 ארבעה נדרים התירו חכמים.

The last statement reads כנדרבותם נדר בניזיר ובקרבן. Free will offerings of pious men are made in connection with Naziriteship, or sacrifices, i. e., good men do undertake to serve as Nazirites, or to make voluntary sacrifices, out of mere piety, and not because they have failed to fulfill a vow to abstain from certain acts.

As in the treatise of B.K. here too the compiler put at the be-

118. The כ in the word כנדרני is pleonastic. For the pleonastic use of כ in the Bible, cf. Gesenius-Kautzsch, Hebrew Grammar, Oxford, 1910, p. 376.

119. Cf. M. II. 3 אובל אמרני נזיר Cf also T. Ned. I. 1. for the expression נדר בניזיר

120. Cf. M. I. 4 אסור . . . שאני אוכל כך; see also M. III. 5.

121. שבועה לא אוכל כך — אסור.

122. The explanation given by Leszynsky Die Sadduzaer, Berlin, 1912, p. 50, note 2, is far fetched.

ginning of the treatise several very ancient halakot which were elaborated throughout the course of the tract.

It is the ancient method of compiling works by recombining and shifting texts from various sources without making changes to suit the new context, which often accounts for the appearance of statements that are entirely out of harmony in their new place. Thus in Kiddushin I. 7 we find the principle about *מצות עשה שהזמן גרמא*. There is no statement in this chapter with which it may be connected. However, to understand why this statement was introduced, it is important to note that two changes have been made in the old Mishnah of Kiddushin. First, that the statement in T. Sotah II. 7-8, *האיש זכאי בבתו בקדושיה בכסף בשטר ובביאה האיש עובר על* *מצות עשה שהזמן גרמא* was originally found in Kiddushin, and secondly, in M. Kid. I. 7, the statement *כל מצות הבן על האב* originally followed the principle *מצות עשה שהזמן גרמא*, as is evident from T. Kid. I. 10-11. If we did not possess these sources, it would have been impossible to explain the presence in Kiddushin of the statement concerning *מצות עשה שהזמן גרמא*.

To sum up, it may be assumed that the compiler of the Mishnah has very unskilfully rearranged the materials he had before him, shortening or lengthening the discussion of particular points of law as it suited his purpose. Inasmuch as the old texts were mostly preserved in their original form, it is possible in many cases for us to disengage the ancient sources from the newer accretions.

## CHAPTER II

### BARAITOT <sup>1</sup>

After the compilation of the Mishnah all Tannaitic traditions which found no place in that work were generally termed baraita.<sup>2</sup> According to Prof. Ginzberg <sup>3</sup> the baraitot were taught in preparatory schools called ברא by teachers who were termed תנא ברא.<sup>4</sup> This view is substantiated by the recurring remark in the Yerushalmi נצא לחוץ ונלמד<sup>5</sup> which seems to point to some definite place.<sup>6</sup> This school does not seem to have enjoyed great esteem if we may

1. On the views held by the Tosafot concerning the baraitot see M. G. W. J. 38, p. 402-3, cf. also Oppenheim, כנסת ישראל II, 81-98.

2. The baraita is also referred to as משנה. Speaking of a baraita Resh Lakish says (Yer. Er. 19b) כל משנה שלא נכנס לחבורה אין סומכין עליה. Similarly, in Ket. 81b משנה אינה מדרש של חכמים ולא סומכין עליה במיד לא נשנית משנה זו בבית מדרש של חכמים ולא סומכין עליה במיד. See also Shab., 106a. Thus R. Hoshaya is called אבי המשנה because of his baraita collection; cf. Hor. 13b and Er. 10a in reference to a baraita of Levi, Shab. 123b אין הלכה כאותה משנה; and Shab. 61a משניות גדולות; and Shab. 61a משניות גדולות; and Shab. 61a משניות גדולות. See also Tosafot, B.K. 43a s. v. רישא employ the term when referring to a baraita; similarly, Maimonides, Moreh. III, 22, (ed. Munk. p. 46b) speaks of חכמי המשנה. For the plural משינות see Ginzberg, Ginze Schechter, II, 94 and for משינות גדולות cf. Lewy, Mischnah des Abba Saul, p. 3, note 1; for the term משנה חצונה (cf. נצא לחוץ ונלמד), see Lewy, l. c., p. 4, note 3 and Marmorstein, חסרות ויתרות, n. 3, note 10. Mann, Jews in Egypt, II, 334, note 10 suggests that סדר רבתי refers to Tosefta and baraita. For the term הלכות or הלכתא as a designation for baraita, cf. Sanh., 101a and Yer. Peah, II, 4. On the occurrence of the term baraita in the Yer., cf. Lewy, l. c., and Bruell, Jahr. VII, 125. For the difference between משינות and משינות see Ginzberg, Ginze Schechter, II, 16.

3. J. E., II, 514.

4. In B. M. 52a, תנא ברא refers to Tosef. B. M. III, 17.

5. cf. Yer. Shab., II, 5 נצא לחוץ ונלמד נפסין ושמעון where the נצא לתנאין השונים חוץ לבית המדרש ומהן נלמד קרבן העדה correctly says A list of these passages is given by Ratner to Shabbat, p. 37. In the Babli the expression נפסין ושמעון is found, cf. Yeb. 36a, B. M. 20b, and Hul. 6a. In the last passage reference is made to a statement found in our Tosefta. The remark in Git. 44a נפסין ושמעון would imply that written sources were consulted, see Bloch, Einblicke, p. 91-92.

6. cf. Halevy, Dorot ha-Rishonim, II, 80, 107; Funk, Juden in Babylonien I, 85, note 3.



infer from the slurring references to it by R. Yohanan<sup>7</sup> פוק תני לברא. Traditions taught in this school lacked the authority with which they were invested when they were transmitted in the academy.<sup>8</sup> While a great many baraita collections were current<sup>9</sup> in the various schools, three of them enjoyed greater esteem than the rest, namely those of R. Hiyya, R. Hoshaya and Bar Kappara.<sup>10</sup>

R. Hiyya, a contemporary of, and probably older than Rabbi Judah,<sup>11</sup> was held in especially high esteem for his great erudition and for his endeavours to promote Jewish education and learning.<sup>12</sup> We are informed that R. Hiyya learned seven<sup>13</sup> halakic works from

7. Shab., 106a, Yoma 43b, Bez. 12b. We find also the phrase פוק קרי קריין לברא (Yeb., 40a, Ber., 30a, and Ket. 56a,) by R. Yannai when addressing R. Hanina; cf. also Shab., 156a.

8. It was in the academy proper בי מדרשא where the scholars determined when a Tannaitic statement became standard practice or not; cf. Yeb. 92b, אמר ועירי ליתא למתניתין מרתני בי מדרשא. Similarly R. Yannai, l. c: 95b says קדושין תופסין בחבורה נמנו וגמרו אין קדושין תופסין ביבמה and in Shab. 3a (and parallel passages) we find the phrase נזרקה מפי חבורה. On חבורה, cf. Ginzberg, Unbekannte Juedische Sekte p. 108, note 1, Bacher, M.G.W.J. 43, p. 345-60 and Chajes, l. c., p. 572.

9. According to Rashi, (Ber. 20a, s. v. בתלמוד מתיבתא) thirteen baraita collections were in circulation, cf. also Ned. 41a, Sherira's Letter, ed. Lewin, p. 19-20. On thirteen as a round number, see Graetz, Geschichte IV, 4th, ed., p. 438 and Bergmann, Legenden der Juden, p. 137, note 4. Hoffmann, Einleitung in die halachischen Midraschim, 13-14, takes the statement אין קץ לתוספתות too literally. This remark is evidently an exaggeration.

10. cf. Koh. R. to II. 8 and Y. Horayot end where their collections are termed משניות גדולות because of their outstanding importance. In Yelammedeu cited in Yalkut I, 771 read ר'הושעיה instead of כולם נתנו מרועה אחר. For the use of the expression רבינו הקדוש see also Num. R. 14: 4 and 15: 22, which go back to T. Sotah VII, 12. In Horayot end, it is R. Levi who calls attention to the importance of these three collections. In Koh. R. VI, 2, the Mishnah of R. Akiba is mentioned together with the three collections.

11. In Ket. 103b the amoraim were not certain whether Rabbi or R. Hiyya died first.

12. In Suk. 20a, Resh Lakish says: ... בשנשחכחה תורה מישראל עלו ר' חייא ובניו ויסרוה. This statement means that with the appearance of the Mishnah, there was a danger that the baraitot would be forgotten, hence he and his sons undertook the compilation of various collections. Besides a baraita collection elucidating the Mishnah, he is supposed to have compiled the Sifra, and his son Hezekiah is responsible for editing the Mekilta di R. Shimon, cf. also Lebrecht, Handschriften des babylonischen Talmud, p. 10-11.

13. cf. Nedarim, 41a אנמריה אפי הלכתא עשר רבי תלת עשר אפי הלכתא אנמריה cf. Blau. R. E. J., vol. 67, p. 7, and Ps-Rashi who שחיה שונה למורו ב"ג פנים.

Rabbi. This accounts partly for the fact that R. Hiyya's baraitot were valued so highly.<sup>14</sup> His views were accepted even when there were valid arguments<sup>15</sup> or other baraitot to refute them.<sup>16</sup> On the other hand, some amoraim would not credit R. Hiyya with having any more knowledge than was contained in the Mishnah.<sup>17</sup> Ilfa tells us that he could trace the source of every statement in R. Hiyya's baraita to R. Judah's Mishnah.<sup>18</sup> Other amoraim did not hesitate to reject certain of R. Hiyya's baraitot as a guide to practice.<sup>19</sup>

After the compilations of R. Hiyya, the baraita collections of R. Hoshaya,<sup>20</sup> the pupil of Bar Kappara,<sup>21</sup> were considered next in importance. R. Yohanan tells us that R. Hoshaya was as great a scholar in his time as was R. Meir in his generation.<sup>22</sup> As a matter of fact, some amoraim pay R. Hoshaya the great compliment of rating his baraitot as high as those of R. Hiyya.<sup>23</sup> In Hullin 141a

14. cf. the statement ממתניתין צריכה למתניתין דרבי חייא, see Halevy, *Dorot ha-Rishonim* II, 121.

15. cf. Er. 10a חייא דתני ר' משום דתני ר' חייא.

16. cf. Shab. 141b. An elderly scholar said to R. Abbahu סמי רידך מקמי הא דתני ר' חייא.

17. cf. the statement רבי לא שנה ר' חייא מנין לו, Er. 92a, Yeb. 43a, Nid. 62b and Tosafot l. c. s. v. ר' חייא. But this remark is not to be taken too literally, for we do find R. Hiyya differing even with Rabbi. See, e. g. Hul. 15b, and in T.Hul. l. 5, it is R. Hiyya's view that is adopted.

18. Thus, Yer. Kid. I, 58d, Ket. VIII, 31a, but Babli Taanit, 21a speaks of R. Hiyya and R. Hoshaya. Perhaps Rashi's remark in Hullin 20a s. v. ויצפורן שן that most of the statements in the Sifra and the Tosefta are incorporated in the Mishnah were inspired by Ilfa's utterance.

19. cf. Erubin, 48a where it is said that R. Yose b. R. Hanina ridiculed a baraita of R. Hiyya, and in Berakot 23b, R. Isaac differed with R. Hiyya.

20. In Al-Nakawa's *Menorat ha-Maor*, ed. Enelow, I, 12, R. Hoshaya and R. Ishmael are made joint authors of the Mekilta. It seems that the phrase חבר באור על ספר בראשית dropped out after the words רבינו הקדוש. This is also the reading by R. Nathan b. Abraham in his Arabic commentary on the Mishnah (cf. Assaf, *Kiryat Sefer*, X, 381ff, who described this MS.), and Maimonides in his introduction to the Mishnah.

21. Keritot 8a.

22. Erubin, 53a, cf. Bet Talmud, II, 351.

23. R. Hoshaya was called אבי המשנה. Schorr's view (*Hehaluts* III, 128) that he was so called because he was the first to collect baraitot, is incorrect, cf. Lewy, *Mekilta di R. Shimon*, p. 2, and Halevy, *Dorot ha-Rishonim*, II, 253-4.

R. Zera informs us *לאו אמנא לכו כל מתניתא דלא תניא בי רבי חייא* Every baraita not quoted from the collection of R. Hiyya or R. Hoshaya is inaccurate,<sup>24</sup> and may not be cited to refute an argument in the course of the discussion in the academy. This view of R. Zera seems to have been accepted by some scholars.<sup>25</sup> Nevertheless, it is known that other amoraim did not share this opinion. Even Raba, who had a great respect for R. Hoshaya's baraitot,<sup>26</sup> held that correct baraitot were also to be found in other collections. In Yoma 70a he tells us that a certain baraita was correctly transmitted in the baraita collection of Samuel and in the Tosefta.

The third baraita collection mentioned by R. Levi is that of Bar Kappara.<sup>27</sup>

It is strange that R. Zera does not have the same regard for Bar Kappara's baraitot as he does for that of R. Hoshaya, who was a disciple of the latter. Perhaps prejudice was engendered against Bar Kappara because of the fact that he did not obtain ordination as a consequence of his tussle with Rabbi.<sup>28</sup> On the other hand, we find an amora as prominent as Resh Lakish accepting the views of Bar Kappara in opposition to that of the Mishnah.<sup>29</sup> It is noteworthy that R. Hiyya and Bar Kappara, both of them disciples of Rabbi, are in controversy as to what the master taught.

24. The question of the accuracy of the texts of the baraitot was important, inasmuch as some amoraim were careless in their citations, see Bezaḥ 26b. *היה אדא, בר איכמאי היא דמשבש ותני* cf. S. Horowitz, M. G., W. J. 1916, p. 69. In Git. 73a we read *כיון דקשיא רישא אסיפא לא איתמר בי מדרשא ומשבשתא היא* cf. also Shab. 121b. Pes. 99b-100a, and Kid. 47b. On the fabrication of baraitot, see J. Q. R. N. S. II, 89 note, cf. also R. H., 3a.

25. R. Ashi in Sanh. 33a, cf. also B. M. 34a.

26. cf. B. K. 111b, B. M. 62b, *כי שכיבנא רבי אושעיא נפיק לוותי דתריצנא מתניתין כוותיה*.

27. That Bar Kappara compiled his baraitot in the lifetime of Rabbi may be inferred from Nazir, 52b. In Kid. 33a we learn that he studied Torat Kohanim with Simon, the son of Rabbi.

28. M. K. 16a; Yer. III, 81c.

29. Yer. Pes. X, 3, cf. Halevy, Dorot ha-Rishonim, II, 125. In B. B. 154b we find Resh Lakish quoting a statement from Bar Kappara's baraitot *לן ששנויה במשנת בר קפרא* cf. Weiss (Dor, II, 221) is not justified in inferring from this remark that Resh Lakish was familiar with the entire collection of Bar Kappara, cf. Ber. 34a where Bar Kappara comments upon a baraita introduced by the formula *תנו רבנן*.

Besides the three celebrated baraita collections, mention should be made of Levi b. Sisi's compilation, which was most likely made during Rabbi's lifetime.<sup>30</sup> As to the nature of his work there is some divergence of views. Some scholars hold it to be a collection independent of the Mishnah,<sup>31</sup> without giving differences of Tannaitic opinion as it was primarily intended to be a practical code.<sup>32</sup> Others consider his baraitot as an amplification of the Mishnah.<sup>33</sup> Some of the amoraim familiar with his baraitot are R. Hoshaya, R. Shimon b. Zera and R. Yohanan.<sup>34</sup>

Among the early Babylonian amoraim mention may be made of Samuel who collected baraitot.<sup>35</sup> It is rather interesting that he had a blind reader who arranged baraitot for him,<sup>36</sup> *מסדר מתניתא קמא שמואל*. Raba too was acquainted with Samuel's work.<sup>37</sup>

While the Talmud mentions quite a number of amoraim who cite baraitot introduced by the formula *תני*, it does not always mean they compiled independent baraita collections. Especially among the later amoraim it may be assumed that they are merely quoting a baraita from some other source. Thus the baraita in Shab. 150a<sup>38</sup> *תנא רבי מנשה משרבין על התנוקות* is based on the baraita in Shab. 12a whence it has excerpted the view of Bet Hillel.

There was little incentive to make new collections of baraitot in later amoraic times, as there existed a professional class of traditionalists (*תנאים*) who memorized the standard Tannaitic texts and any amora who needed information concerning a baraita could readily get it. The Tanna<sup>39</sup> was usually acquainted with

30. As may be inferred from Yeb. 10a. See also Abodah Zarah, 19a where it is said that he and R. Shimon studied Bible under Rabbi.

31. cf. Ratner in Harkavy Festschrift, 117-122, Marx, J. Q. R. N. S. V. 434-5, and Omanski, *לוי בר סיס*, Tarnow 1929.

32. Zuri, *הנשיאות והועד*, II, 210-11.

33. Halevy, Dorot ha-Rishonim, II, 119.

34. cf. Albeck, M. G. W. J., 69, (1925) p. 323.

35. Zunz, *Ges. Schriften*, III, 242-9; Hoffmann, *Mar Samuel*, p. 25, Weiss, Dor III. 169, and Albeck l. c. 325.

36. Bez. 16b, and Kid. 66a.

37. Yoma, 70a.

38. Albeck, l. c. failed to list this baraita which is quoted in T., XVI. 22.

39. cf. Sherira, *Letter*, ed. Lewin, p. 39; Hoffmann, *Einleitung* p. 13; note 2; Lewy, *Abba Saul*, p. 9 note 12; Halevy, *Dorot ha-Rishonim*, II, 88; Zuri, *הנשיאות והועד*, I, 203ff.

הלכתא (Kid. 49b) and was held in high respect by some amoraim.<sup>41</sup> The availability of the Tanna for information concerning baraitot was partly responsible for the fact that the great amoraim did not know the baraitot by heart as they did the Mishnah. It seems that they were familiar with the contents of the baraitot in a very general manner.

Thus an amora as famous as R. Yohanan is not mentioned as having made a baraita collection. We find very often that he made use of the Tanna. R. Abahu is especially mentioned as his source of information. In Yeb. 72b we are told that R. Yohanan did not at first know the Sifra and that he learnt it in thirty days. What is probably meant is that he became acquainted with its contents rather than that he memorized it. From the fact that R. Yohanan quotes the Mekilta more frequently than any other amora, Prof. Ginzberg infers that he had some share in the compilation of this Tannaitic Midrash.

There was a class of amoraim who paid much attention to the baraitot. Thus R. Sheshet was nicknamed סני for his vast erudition.<sup>42</sup> We are informed that he and R. Nahman studied הלכתא ספרא ספרי ותוספתא וכולי תלמודה, (Sheb. 41b) subjects ordinarily mastered only by the Tannaim. Similarly, the two nephews of R. Yohanan b. Gudgadah (Hag. 3a), as well as a contemporary of R. Nahman b. Isaac are said to have pursued these disciplines (Meg. 28).

On the other hand, there was an equally significant group of amoraim who laid great stress upon סברא<sup>43</sup> or פלפול for the under-

40. Here הלכתא means baraitot, cf. above p. 26, note 2, not Mishnah as Hoffmann, *Einleitung* p. 13, and Blau, *Livre d'hommage a Poznanski*, p. 7, n. 14, believe. Furthermore, the statement in Ber. 47b הלכתא מנשיא בן תחליפא דתני ספרי ספרי והלכתא would prove that הלכתא means baraitot. Otherwise it would not be mentioned last. The amoraim themselves were familiar with the Mishnah and did not need the Tannaim for that.

41. cf. the statement of Resh Lakish in Meg. 28b, and Hor. 3b where it is said that R. Huna invited ten Tannaim to be present at a case.

42. From B. M. 84a, it appears that R. Elazar b. Pedot was quite familiar with baraitot.

43. See Zeb. 96b and cf. the oft recurring phrase אי בעית אימא קרא ואי באית אימא סברא which may reflect the divergent systems of the different schools.

standing of the Mishnah, and consequently minimized the importance of the study of the baraitot. Thus scholars like R. Hanina (B. M. 85b), Resh Lakish (B. M. 84a, Sanh. 24a), Rabbah (Horyot 14a) and R. Hisda (Er. 67a) are singled out for their mastery of dialectics.<sup>44</sup>

At best the familiarity of the individual amora with the baraitot was fragmentary and incomplete.<sup>45</sup> In the Talmud we find little data concerning the extent to which later amoraim kept abreast with the early baraita collections. It is mentioned, for example, that R. Safra knew the *רביית דבי ר' חייא* (B. M. 62b), a baraita of Levi was quoted by R. Hoshaya in B. B. 52b and by R. Shimon b. Zera in Kid. 76b; a baraita of Bar Kappara was known to R. Mani (Yer. Shab. III. 2).

However, some idea of the knowledge of baraitot possessed by the amoraim could be obtained by excerpting from the Talmud a list of baraitot quoted, discussed by, and referred to by the various amoraim. Acquaintance with the baraitot may be assumed in most cases where amoraic dicta<sup>46</sup> in the Talmud are found attributed to Tannaim in parallel passages or are cited in one of the Tannaitic Midrashim. It was natural for a pupil to ascribe to his teacher what he learned from him, even if the information was not original with him. Statements were attributed to amoraim who had actually derived them from Tannaitic sources. Thus we see how it was possible in later times for doubt to arise concerning a particular statement as to whether it was a memra or a baraita *אמר ר' ואמרי לה במתניתא* (Occasionally a statement is given on the authority of an amora and a later hand added that it was also found in a baraita, cf. eg. *אמר רב חסדא וכן תני ר' חייא* (Hullin 134a).

44. On the *חריפי דפומפדיתא* cf. R. E. J. 39: 191-198.

45. cf. on the statement *ליה שמייע לא ברייתא*, Lewy, Abba Sau p. 6, note 6.

46. cf. Tosafot Er, 38b s. v. *אומר* who first called attention to this fact. In regard to amoraic statements found in the Sifra, see ed. Warsaw 1866 with commentary of R. Jacob David. introduction p. 6-9, cf. D. S. Margoliouth, the Use of the Apocrypha by Moslem Writers. (International Journal of Apocrypha, Jan. 1916; no. 44, Series XII. p. 12) who points out that statements of Ben Sira and the New Testament are ascribed to Jahiz (9th century author) by later Moslem writers because the passages were first cited by him.

47. cf. Funk, *Juden in Babylonien* I, 89, note 1; Halevy, *Dorot ha-Rishonim*, II, 137ff.

As most of the baraitot are cited anonymously and very rarely by title, it is difficult to trace their origin. Neither do the various formulae, such as *תנו רבנן* 48, *תני עלה* 49, *תנא* 50, *תניא* 51, *במתניתא תנא* 52, *תנן* 53, and *תני* 54, used to introduce the baraitot help us to identify the sources. 54 Some baraitot are introduced by one formula in one place, and in a parallel passage another one is used. Thus in *Pes. 21a* the baraita *ב"ש אומרים* introduced by *תנו רבנן* is cited in *Shab. 18b* with the introductory phrase *תנו רבנן* (= *T. Pes. I. 7*), or *Pes. 13a* the baraita *נבאי צדקה* is quoted as *רתניא*, whereas in *B. M. 38a* (= *T. B. M. III. 8-9*) it is introduced by *מתיבי* and in *B. B. 8b* by the phrase *תנו רבנן*.

Inasmuch as no independent baraita collections outside of the Tannaitic Midrashim or the Tosefta have been preserved, it would be presumptuous to speak with certainty concerning the original arrangement of the baraita collections of R. Hiyya, R. Hoshaya and the others. The present arrangement of the baraitot in the Talmud offers us no clue, as the compilers undoubtedly rearranged their baraitot in accordance with the order of the Mishnah, or quoted baraitot that were brought in the course of discussion. It may, however, be conjectured that some halakic baraita collections were arranged strictly according to the Mishnah, especially since

48. Sherira, Letter, ed. Lewin, p. 39, held that *תנו רבנן* belonged to the collection of R. Hiyya and R. Hoshaya, but this view is refuted by the statement in *Ketubot 52a*. Hyman, *Toldot Tannaim*, 430, believes that these baraitot are pre-Mishnaic; cf. de Fano, *Responsa*, 25.

49. R. Simson of Chinon in *Sefer ha-Keritot*, and Hoffmann, *Mag.* 1882, p. 153ff. held that these baraitot emanate from the Tosefta; cf. also Spanier, *Tosefta Period*, p. 18-19.

50. cf. Lewy, *Abba Saul*, p. 5, note 3.

51. cf. Halevy, *Dorot ha-Rishonim II.* 137 ff.

52. Sometimes *תני* is used to introduce an amoraic statement. cf. Albeck *M. G. W. J.* 69, p. 316, note 1 and Kaplan, *The Redaction of the Babylonian Talmud*, p. 208.

53. That *תניא* introduced also a baraita, was first noted by Tosafot *Kid. 40a*, s. v. *מקיפין* and *Hul. 87b*, s. v. *תנן*; Tosaf. *B. B. 2 a. s. v. ברתניא* cf. also Ginzberg, *Geonica II* 190, *Ginze Schechter II*, 149 and 558, note 15; Halevy *I. e.* 872ff., Epstein *J. Q. R. N. S. XII*, 312; Friedmann, *Introduction to the Mekilta*, p. XLIV-XLV. Later copyists changed many passages which originally read *תנן* into *תניא*. A list of such passages was given by Albeck, *Untersuchungen* 160-161 to which may be added *Yeb. 52b*, 117a, *Ket. 46a*, and *B. K. 86a*.

54. In regard to the Geonic attempt to distinguish between these various formulas, see Friedmann, *Introduction to Mekilta*, p. XLVI, Assaf, *ספר היוכל לכבוד פישמאן* = *p. 21 דרכי התלמוד וכללי ההוראה*, p. 65, Weiss Dor, *II*, 239-40, Ginzberg, *Ginze Schechter II*, 33.

they were explanatory or supplementary of the Mishnah. This arrangement would have facilitated for the amoraim the study of the Mishnah.<sup>55</sup> Note the remark in B. M. 51a מה דשייר במתניתין מפרש בבריייתא.

On the other hand, the Mishnah has very often statements in one treatise that belong in another, as well as quite a bit of irrelevant material. These defects were remedied by baraita collections which were arranged strictly according to subject matter, such as נזיקין דבי קרנא or כתובות דבי רב or קרושין דבי לוי. These baraitot contained different readings, incorporated old sources and presented views contradictory to the Mishnah. But in no wise may it be assumed that the baraitot of R. Hiyya and R. Hoshaya were compiled in order to dispute the authority of the Mishnah. Undoubtedly individual statements<sup>56</sup> in the M. were contradicted, but the authority of the Mishnah as a whole was never questioned. Frequently the differences between the baraitot in the various schools were merely textual, cf. Ab. Zarah 19a אבל גמרא מחד רבה מעלי כי היכא דלא ליפלג לישני.

The amoraim frequently argued matters which are admittedly theoretical and remote from actual life such as details of sacrificial ritual and other laws which were obsolete in their day, as well as eventualities which existed in their fancy.<sup>57</sup> However, by far and large, the amoraim were of a practical bent of mind.<sup>58</sup> To them the observance and enforcement of the law was a matter of primary importance and of immediate need. They devoted their best energies to making the law applicable to their time. The greatest problem for them, next to a correct interpretation of the Mishnah, was the achievement of some kind of unity amid the diversity of practice allowed by the earlier authorities. The baraitot no less than the Mishnah abound in conflicting opinions on almost every point of law, making it impossible to deduce from them in most instances what should be the standard practice.

55. cf. Zuri, הנשיאות והועד, II. 211-212, Bet Talmud, II, 114-127, Halevy, II, 137.

56. As was asserted by Schorr and Weiss, Dor, III, 2, note 1. Their view was refuted by Halevy.

57. cf. the statement דרוש וקבל שכר Sanh. 71a.

58. cf. the remarks הלכתא למשיחא מאי דהוה הוה Nazir 23a and Sanh. 51b.



The initial step towards stabilizing practice was undertaken by making a rule prohibiting a scholar from rendering a decision of law solely upon the basis of the Mishnah. In Niddah 7b it is stated<sup>59</sup> *אין למדין הלכה מתוך משנה*. While the reason is not given here, it is stated elsewhere that Jewish law would be in great danger, if the liberty were given to the scholar to draw conclusions from the Mishnah as to what the practice should be.<sup>60</sup>

A great number of mooted points of law in Mishnah are clarified in the baraitot, halakic or Agadic, as well as in the Tosefta. But Samuel forbade one to resort to these compendia to derive rules for practical guidance. As we read, R. Zeira in the name of Samuel says, *אין למדין לא מן ההלכות ולא מהגדות ולא מן התוספות אלא מן התלמוד* Yer. Peah II. 4.<sup>61</sup> Decisions of law were to be rendered only on the basis of discussions (תלמוד) that took place in the academy, where the authentic interpretation of the baraitot, as well as their relation to the Mishnah were fully argued.

Later on it seemed that Samuel gave up this view and adopted a more rigorous attitude. He realized apparently that if a scholar was permitted to draw his own conclusions as to the rendering of the final decision by listening to the discussions (תלמוד) in the academy, the danger of uncertainty and conflicting opinions was not removed. There would still be the possibility of a real difference in view as to the inference to be drawn from a discussion.

59. This is the correct reading and is quoted by R. Samuel b. Meir to B. B. 130b, s. v. *עד שיאמרו* and Rashi, to Sanh. 100b s. v. *רבה אמר*. Or Zarua B. B., no. 114, but Rashi to Nid., l. c., reads *שתא סדרי-השם* = Mishnah. Later on Shas was changed to Gemara, cf. Blau, *Der Terminus Schass in Freie Juedische Lehrerstimme*, XI, 1917, p. 7-8 and also Zuri, *שלטון*, I 292.

60. Cf. Sotah 22a *משנתן מתוך הלכה שמורין עולם* *תנאים מבני עולם*. On the limitations of *בעל משנה* cf. Sanh. 100b, Lev. R XXII, 1 and the statement of Samuel *התלמוד מן המפרש מן התלמוד* *ולבא אין שלום זה המפרש מן התלמוד* *למשנה*.

61. Cf. Kohelet R. to VI, 2. In reference to the three famous baraita collections it is said *שאסור להורות מהם* and then continues *כי איש נכרי יאכלנו זה בעל תלמוד שמטמא ומטהר אוסר ומתיר*. It seems that R. Zeira himself did not accept Samuel's view, for we find him asking in Y. Yeb. IV, 11 *רבה דמתניתא או רבה דאולפנא* *הדיינו רבה רבה דמתניתא או רבה דאולפנא* Here *אולפנא* = *תלמוד*, as was first pointed out by Schorr Hehalutz II. 83, cf. Bet Talmud II, 243-4, Halevy II, 106ff. and Hoffmann, Z. F. H. B. V, 102.

For it required a thorough knowledge of the Mishnah<sup>62</sup> and a good acquaintance with the baraitot to follow the discussion properly so as to be able to draw the correct conclusions.

Consequently, Samuel established the rule that scholars were not to hand down decisions of law on the basis of conclusions drawn from debates in the academy, but were to be given explicit instructions concerning the accepted practice. As we read in B. B. 130b, <sup>63</sup>תר אין למדין הלכה לא מפי תלמוד <sup>64</sup>ולא מפי מעשה <sup>65</sup>עד שיאמרו לו הלכה למעשה <sup>66</sup>

The reason underlying the statement that one may not infer even from an actual case מעשה what the standard practice should be, is that the decision in one particular case may merely reflect a local custom, and may not be a principle of common law.

62. cf. the statement of R. Yohanan in Sanh. 42a במי אתה מוצא מלחמתה של תורה במי שיש בידו חבילות של משנה. For the expression מלחמתה של תורה cf. also Meg. 15b. Resh Lakish too (Taanit 8a, ed. Malter, N. Y. 1930, p. 24) says אם ראית תלמיד חכם שתלמודו קהה עליו כברזל בשביל משנתו שאינו סדורה לו.

63. While this statement is given as a baraita, it is doubtful whether it is a tannaitic remark. We are inclined to regard it as Samuel's opinion, cf. Yer. Ber. II, 6 and Zuri, הנשיאות והועד, I 287, note 21 and p. 188.

64. This is the correct reading as found in the MSS. and early authorities. The reading למוד in the current texts is a censor's alteration.

65. cf. Y. Peah II, 4. רבי חנינה בשם שמואל אין למדין מן הדרכי ההוראה cf. Chajes, p. 13-14.

66. On הלכה למעשה, cf. Ket. 56a, and the passages cited in the margin.

## CHAPTER III

### TOSEFTA

Before we discuss the problem of the Tosefta it may be helpful to have before us the data on this compilation as is found in Talmudic-Midrashic literature. These sources inform us that several Tannaim were supposed to have been acquainted with it and a number of Amoraim are explicitly mentioned by name who either studied it or knew of it in some way or other. R. Yohanan ben Zaccai is said to have studied<sup>1</sup> תוספתות ואגדות הלכות ומשנה גמרא, but the word תוספתות is not original<sup>2</sup> and was added later on.

R. Elazar ben Shammua describes three types of scholars. The third class which he characterizes as אבן פסיפס is one that is conversant with מדרש הלכות ואגדות ותוספתות.<sup>3</sup> Here too תוספתות is a later gloss,<sup>4</sup> as may be inferred from the context. Each type of student depicted by R. Elazar knew one subject more than the preceding. The first was familiar with Midrash, the second with Midrash and Halakot, the third with Midrash, Halakot and Agadot.

Then there is the statement of R. Yohanan נחמיה ר' סתם תוספתא ר'... וכולהו אליבא דרבי עקיבא<sup>5</sup> Sherira<sup>6</sup> takes this passage to mean

1. Abot di R. Nathan, chapter XIV, p. 57, ed. Schechter.

2. It is not found in any of the parallel passages cited by Bacher, *Agada der Tannaiten*, I. 24, note I, cf. also *Er.* 19a בן יוחנן ר' תנא דבי ר' זכאי.

3. Abot di R. Nathan, chapter XXVIII, p. 86.

4. Cf. also Bacher, *Agada der Tannaiten*, I, 482. It is not found in the parallel passage cited from the *Midrash ha-Gadol* by Schechter, l. c., note 9. It is possible that the scribe, who added the word תוספתות in this passage and in the one mentioned above, had in mind Y. Peah II, 6 where הלכות ואגדות ותוספתות are grouped together.

5. Sanhedrin 86a. The variant readings from this passage found in medieval authorities are not genuine enough to merit serious consideration, cf. Lewy, *Abba Saul*, p. 5, note 5 and Bruell, *Zunz Jubelschrift*, p. 93, note 3.

6. Letter, (ed. Lewin, p. 27).

that R. Nehemiah compiled the Tosefta on the basis of an earlier collection of baraitot in accordance with R. Akiba. Sherira does not state more clearly what is indicated by the latter phrase whether he meant that he accepted R. Akiba's decisions or was influenced by him in the presentation of the subject matter. However, as we have pointed out above in reference to the statement *סתם מתניתין ר' מאיר* the simple meaning of the passage *סתם תוספתא ר' נחמיה* can only be that the anonymous views in the Tosefta represent the opinions of R. Nehemiah. As very few of R. Nehemiah's legal decisions are preserved, it is very difficult to verify this view. Only one anonymous statement in the Tosefta can be proven to be in accord with R. Nehemiah's opinion.<sup>7</sup> On the other hand, R. Nehemiah differs with a number of anonymous statements in the Tosefta.<sup>8</sup>

Secondly, the statement *עקיבא דרבי אליבא* could only have been understood by the Amoraim to mean in accordance with the halakic views of R. Akiba.<sup>9</sup> This, however, is refuted by the data in the Tosefta. We actually do find R. Nehemiah stating views in opposition to those of R. Akiba.<sup>10</sup> Hence we are inclined to assume that this statement too, as it reads at present, lacks historical basis and nothing definite can be inferred as to R. Nehemiah's connection with the Tosefta.

In *Kohleth Rabbah* to V. 8 reference is made to *תן תוספות של בית רבי ותוספות של ר' נתן*<sup>11</sup> which were known to the

7. Tosefta Sanh. XIII, 8, as is evident from M. Sanh. X, 3; cf. Bruell, l. c., p. 93, note 4.

8. Cf. for example T. B. K., IX, 6, (cf. M. Naz. IX, 4; M. Sanh. IX, 1; Mekilta di R. Shimon, p. 128; Yer. Sanh. IX, 1, Babli 28b. (סתמא דרבי נחמיה); Sotah VI, 3. Menahot VII, 16c; Meilah II, 6; Negaim, III, 11; V, 6, 10, 11; VI, 6; Zabim IV, 6.

9. The word *אליבא* always has this sense, cf. e. g. Ber. 2b *תרי תנאי ואליבא דר' מאיר*.

10. Cf. M. Maasroth, III, 5; Sot. V, 4; VI, 3; T. Kelim, B. K. II, 2. In T. Kilaim II, 12 R. Nehemiah decides according to R. Ishmael in direct opposition to R. Akiba. In T. Shab. II, 4 the anonymous view is in accordance with R. Eliezer and in conflict with the opinion of R. Akiba, as is evident from M. Shab. II, 3.

11. These remarks do not form part of R. Nehemiah's statement, as it is impossible that he should have referred to *בית רבי*, but it is an interpolation by the compiler of the Midrash. In the parallel passage in Lev. R. XXII, 1 this statement is omitted, cf. Bruell, l. c. p. 94, note 8.

compiler of the Midrash. The תוספות של ר' נתן<sup>12</sup> is perhaps none other than the משנה ר' נתן<sup>13</sup> mentioned in the Babli and cited in the Yer. as תני ר' נתן. The statement סוף משנה<sup>14</sup> (B.M. 86a) means that their compilations of halakah were the last to be made by full Tannaim. Henceforth Tannaitic traditions were compiled by Semi-Tannaim or Amoraim. The תוספות של בית רבי will be discussed later on.

The first Amora to refer to the Tosefta by title is Samuel.<sup>15</sup> Besides him, R. Joshua b. Levi,<sup>16</sup> R. Yohanan,<sup>17</sup> R. Abbahu,<sup>18</sup> R. Levi,<sup>19</sup> R. Aha,<sup>20</sup> R. Berechiah,<sup>21</sup> R. Judan,<sup>22</sup> and R. Yose b. Ika<sup>23</sup> mention it. R. Nahman, R. Sheshet<sup>24</sup> and a scholar<sup>25</sup> of the time of R. Nahman ben Isaac studied it. Raba actually quoted a passage from it by title.<sup>26</sup>

However, it is not to be assumed that the Tosefta was little known or studied in amoraic times since only about ten Amoraim refer to it explicitly. As a matter of fact, the study of the Tosefta

12. Bacher (Agada der Tannaiten II, p. 438, note 2) has the strange view that R. Nathan had something to do with the Mekilta, because a statement of his is given anonymously there.

13. It is worthy of note that while R. Nathan is mentioned only twice in the Mishnah, his name occurs about sixty times in the Tosefta, cf. Bruell, l. c., note 9; Hoffmann, Die Erste Mischnah, p. 27, note 1 and Chajes אמרי בינה. Perhaps the תוספות של ר' נתן means the אבות אבות. The Tosafot referred to it as אבות דמס' תוספתא cf. Schechter, p. IX., cf. also Marx, J. Q. R. N. S. XIII, 354.

14. Mishnah is used here in the broad sense of Tannaitic compilations of halakah. Halevy's interpretation in Dorot ha-Rishonim, Ia, p. 819ff. that R. Nathan is mentioned with Rabbi as co-redactor, because the Mishnah was compiled under his auspices, as אב בית דין lacks proof.

15. Y. Peah, II, 6 (17a).

16. Lev. R. XXII, 1; Gen. R. XVI, 4; Koh. R. to I. 10

17. Sanh. 86a.

18. Y. Pes. X, 1, 37c; Shab., VIII, 1; Bruell, l. c., p. 100, note 32.

19. Y. Horayot end, Koh. R. to VI, 2.

20. Horayot end

21. Shir. R. I, 14, (ed. Wilna, p. 24).

22. Lev. R. 30.

23. Shir. R. I, 4.

24. Shebuot 41b.

25. Meg. 28b.

26. Yoma 70a which is found in Tosefta III. It is also stated there that the same baraita is found in the baraita of Samuel, cf. Bruell, l. c. p. 94, note 10.

constituted one of the four disciplines every Tanna or memorizer had to master and consequently the knowledge of its contents was available to the Amoraim.<sup>27</sup>

As to the relative importance of the Tosefta and the other Tannaitic compilations, opinions seem to have varied. Thus R. Yohanan and R. Levi mention the Tosefta immediately after the Mishnah, implying apparently that the study of the Tosefta ranked next in importance to that of the Mishnah.<sup>28</sup> Other sources<sup>29</sup> seem to indicate that the study of the halakic Midrashim took precedence over that of the Tosefta. Some Amoraim, such as R. Joshua b. Levi,<sup>30</sup> R. Berechiah,<sup>31</sup> R. Judan,<sup>32</sup> R. Jose b. Ika<sup>33</sup> and R. Aha,<sup>34</sup> mention the study of the Talmud before that of the Tosefta.<sup>35</sup> This is quite strange, inasmuch as Talmud<sup>36</sup> in the context means critical discussion of the Mishnah and consequently the study of the Tosefta ought to be a prerequisite. Even more unusual is the fact that Samuel mentions the Tosefta after Agadot. It hardly seems probable that a great halakist like Samuel who devoted little attention to the Agada should consider the latter branch of study more important than the former.<sup>37</sup>

From the passages which discuss the curriculum of study that obtained in the Talmudic era, it is evident that the Amoraim clearly distinguished between the baraitot and the Tosefta,<sup>38</sup> although it

27. Kiddushin 49b.

28. Cf. Bruell, l. c., p. 92, note 2; Ginzberg, *Geonica*, II, p. 329; Or Zarua, Alpha Beta, I, no 754 and Schechter's *Saadyana*, p. 35.

29. Shevuot 41b and Meg. 28b.

30. Cf. note 16.

31. Cf. note 21.

32. Cf. note 22.

33. Cf. note 23.

34. Cf. note 20.

35. Weiss, (*Dor II*, 221, note 3) inferred from these instances that the Tosefta was compiled quite late, but his view is untenable. Similarly, Schechter, *Studies in Judaism III*, 209.

36. Cf. Lewy, *Interpretation*, p. 4, note 1, who called attention to the fact that there were Tannaim who memorized the "discussions", i. e. the Talmud.

37. Bacher, *Agada der Bab. Amor.*, second edition p. 40

38. Cf. also Simson of Chinon in ספר כריתות, חלק ימות עולם letter 12 where he says: "Since the baraitot of R. Hiyya and R. Hoshaya are called Mishnayot, this implies that their collections are not identical with that of the Tosefta mentioned in the Talmud."

is not stated wherein the difference consisted.<sup>39</sup> Thus Raba<sup>26</sup> actually differentiated between the Tosefta and the baraita of Samuel. Only since Geonic times do we find the tendency to identify some of the baraitot of the Talmud with the Tosefta. Thus R. Sherira and Maimonides considered R. Hiyya the compiler of the Tosefta. Rashi<sup>40</sup> speaks of a Tosefta of Samuel. Meiri believed Bar Kappara to be the redactor of the Tosefta.<sup>41</sup> The post-Talmudic authorities were familiar with the baraita collections of R. Hiyya, R. Hoshaya, Bar Kappara, Levi, Samuel and the others, only as they were cited in the Talmudim and Midrashim. Since a great number of passages of the Tosefta were found in one or other of the baraita collections interspersed in the Talmud, the later authorities attributed the authorship of the Tosefta to one or other of the Amoraim who were known for having made collections of baraitot. We do not find, however, that the Amoraim committed themselves on the point of authorship.

After having submitted the data on the Tosefta as presented by the Amoraim, we shall proceed to take up the various problems of the Tosefta. The question of the authorship and redaction of the Tosefta has been discussed frequently by mediaeval scholars<sup>42</sup> and modern investigators.

In Kohelet R. to V. 8 reference is made to the תוספות של בית רבי. Since this statement was interpolated in the Geonic period,<sup>43</sup> this much is beyond doubt that the glossator was acquainted with the view which attributed the Tosefta to the בית רבי.<sup>44</sup> Various reasons may be advanced why this theory should receive serious consideration. First, we learn from Hag. 3a that the two mute nephews of R. Yohanan b. Gudgada, who were students in the academy of

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39. Prof. Ginzberg is inclined to believe that Tosefta was merely a school term.

40. Cf. Bet. Talmud, II, 116-117.

41. Cf. Schechter, Saadyana, 141, note 1; החלוץ I, 54 note 1; III, 118 Spanier, Tosefta Periode p. 8.

42. Cf. Duenner, Die Theorien ueber Wesen und Ursprung der Tosefta.

43. That this phrase is a Geonic insertion is evident from the fact that the minor treatises too are mentioned here, cf. Zunz, Gottesdienstliche Vortraege, second edition, p. 277.

44. Cf. Bruell, l. c., p. 94, note 8; Hoffmann, Die erste Mischnah, p. 27, note.

Rabbi had studied the Tosefta.<sup>45</sup> Hence Sherira correctly infers that the Tosefta was compiled in the time of Rabbi.<sup>46</sup> בְּיוֹמֵי דְרַבִּי אֲתָרְצוֹן תּוֹסֶפְתָּא. That the Tosefta is an early compilation may be inferred from the fact that an Amora as early as Samuel mentions it by title.

Secondly, the memorizers (Tannaim) utilized by Rabbi in the compilation of his Mishnah were familiar with the huge mass of early traditions, such as R. Meir's Mishnah, as well as that of the other Tannaim, which were less available to the subsequent Amoraim. It was natural that they would draw upon the rich materials not used for the Mishnah for the compilation of the Tosefta. The fact that the Tosefta is so poorly edited will be better explained by the fact that it is not the compilation of a prominent Amora,<sup>47</sup> but the product of the combined efforts of undistinguished "Tannaim," masters of the Tannaitic traditions of the academy of Rabbi.

In the Yerushalmi<sup>48</sup> quotations from the Bet Rabbi consist chiefly of variant readings from the Mishnah<sup>49</sup> some of which are not included in the Tosefta. This would not argue against the view

45. According to the reading of Sherira, Letter, p. 35. In the editions of the Talmud תּוֹסֶפְתָּא is omitted, but there is no valid reason to doubt Sherira's reading.

46. This is the reading of the Spanish version. The French texts read אֲתָרְצוֹן בְּרִיאָתָא the word אֲתָרְצוֹן means to arrange, just as in Targum Yer. to Ex. XXXIX, 33 מִתְרַץ לָהֶן סֵדֶר כְּהוֹנָתָא.

47. In modern times too we find scholars who attribute the compilation of the Tosefta to one or the other Tanna. Thus Hoffmann, Mag. XV, 126 on the basis of a single passage assigns the role of editor of the Tosefta to Rab. But this is hardly tenable. The Amoraim in Shab. 120a find his statement נִתְּנִים עֲלֵיהָ מִיָּמַי מִצֵּד אַחֵר to be in contradiction to T. Shab. XIII (XIV, 6). According to Friedlaender מְבֹאָה לְתוֹסֶפְתָּא Tyrbau, 1920, p. 28-29, Samuel was the redactor of the Tosefta. But this view barely needs refutation, cf. Schwarz, Tosefta Zeraim, XIII ff. Albeck in an exhaustive study of the sources of the Tosefta has shown that none of the well-known Amoraim can be credited with having compiled the Tosefta, Monatsschrift, 69 (1925), 311-28. Weiss's statement, Dor. II, 224 that the Tosefta was redacted in the time of R. Papa and Zebid is based on no available evidence.

48. For a list of passages, cf. Krochmal הַחֲלוּץ III, 124, note 1 and Schorr, l. c. VI, p. 33-35, and XIII, 5.

49. Cf. Frankel, הִירוֹשְׁלִמִי, p. 19a, Weiss, Dor, II, 214; Halevy II, 148 et seq. and Albeck, Abhandlungen zur Erinnerung an Chajes, p. 5-8. In Yer. Shab. IX, 2, XIX 3, R. Yohanan preferred the reading of the textus receptus of the Mishnah to that of the Beth Rabbi.



that the Bet Rabbi<sup>50</sup> were the compilers of the Tosefta, as it is possible that some of their views were omitted by a later editor. Neither would the fact that in the Yerushalmi no allusion is made to this activity of the Bet Rabbi militate against this theory, for an argumentum ex silentio cannot disprove anything.

That the Tosefta was compiled early may also be inferred from the fact that both the Tosefta and the Mishnah employ the term הקבה for the name of God, whereas in Amoraic sources המקום is used.<sup>51</sup> The fact that a number of passages in the Tosefta agree more with the Babli than with the Yer. have led some scholars to believe that the Tosefta was redacted in Babylonia.<sup>52</sup> However, the agreement of the Tosefta in many instances with the Babli would not refute the theory that the Tosefta was compiled by the Bet Rabbi. For the resemblance of the Tosefta to the baraitot in the Babli and Yer is in itself not always a clue to their provenance.

Thus the agreement of a particular passage of the Tosefta with a baraita in the Babli does not necessarily imply that the Tosefta statement is of Babylonian origin. A baraita reported in the Babli by an early Amora, such as Rab, may be Palestinian in origin, for Rab had been in Palestine in his early days and learned the baraita at first hand. On the other hand, many a baraita transmitted in the Yerushalmi<sup>53</sup> by a later Amora might have been received through a Babylonian source. Nevertheless since the greater number of passages of the Tosefta agree with the baraitot in the Yer. we may assume that, while the Tosefta was actually redacted in Palestine, some passages have been added or revised in Babylonia.

50. According to Krochmal החלוץ l. c. the בית רבי was the school of Gamliel and R. Shimon, the sons of Rabbi, and so Weiss, l. c.

51. Cf. Spanier, *Tosefta-Periode*, p. 23, note 19. Prof. Ginzberg too is of the opinion that the Tosefta was compiled shortly after the Mishnah, cf. *Eine Unbekannte Juedische Sekte*, p. 275-276. An early date for the Tosefta, however, would not preclude the addition of a number of passages in the Tosefta from a later period, but not to the extent that Weiss believed. As a matter of fact, some passages are even post-Talmudic in origin, cf. Ratner to Bezah, p. 23.

52. Schorr, *Hehaluts VI*, 46-47; Weiss, *Dor*, II, 222.

53. Thus a number of statements by the Babylonian amora Samuel are presented only in the Yer., whereas many statements of Palestinian amoraim are extant only in the Babli, cf. Frankel, *Mebo ha-Yerushalmi*, 40b-41a.

What was the purpose of the compilation of the Tosefta? As the name<sup>54</sup> indicates, the work was intended primarily to be a supplement to the Mishnah. Although the Mishnah of Rabbi displaced the Mishnah collections of his predecessors, the students of the Academy of Rabbi were not blind to the fact that the Mishnah was too succinct in some places and required elucidation and supplementing. To remedy this shortcoming the Tosefta was compiled<sup>55</sup> and arranged like the Mishnah according to treatises, chapters and paragraphs. Hence the bulk of the statements in the Tosefta are halakic, while the Midrashic and Agadic material constitutes a minor part of the work.<sup>56</sup> It seems that it was intended by calling this compilation the Tosefta, the Supplement par excellence, to give it at least some official authority, more or less like that bestowed upon the Mishnah.<sup>57</sup> But it is quite clear that the compilers of the Tosefta did not enjoy enough prestige to compel its acceptance as the recognized commentary upon and supplement to the Mishnah. Rival authorities were equipped with partly different traditional material bearing upon the Mishnah which was gathered together under the name of baraita collections. Thus at the same time that the Tosefta was being compiled, the great Mishnayot of R. Hiyya and Bar Kappara<sup>58</sup> and the baraita of Levi came into existence.

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54. To be exact, the name of the collection is תוספתא in the plural, whereas תוספתא refers to an individual passage. (In Geonic times we encounter also the form תוספה cf. Schechter, Saadyana, p. 35), cf. Blau, *Livre d'hommage a la memoire de Poznanski*, p. 11-12. On the use of the term תוספתא in the Middle Ages, cf. Bruell, *Zunz Jubelschrift*, p. 110, note 67, Ginzberg, *Ginze Schechter II*, 556, 28 and *ספר ההשלמה על ברכות* p. 28, and Higger in *Ozar Hachaim IX*, p. 93.

55. Exception is hereby taken to the view that our present Tosefta is dependent in some way on R. Nehemiah's Tosefta, which in turn was modelled after R. Akiba's Tosefta, as is asserted by some scholars. It seems rather that the Tosefta was compiled for the first time in the days of Rabbi. Inasmuch as no Mishnah collection previous to that of R. Judah was recognized as authoritative, there was no need for a supplement.

56. In the Mishnah, the Midrashic and Agadic passages occupy proportionately a much smaller part than in the Tosefta.

57. Prof. Ginzberg maintains that the relation of the Mishnah to the Tosefta is similar to that existing between the *Lebush of Mordecai Jaffe* and the *Shulhan Aruk* of Joseph Caro, cf. *J. E. I.*, 306.

58. The fact that R. Hiyya and Bar Kappara and Rab are actually cited in the Tosefta, cf. Beza, I, 7 and Hul. VI, 3, does not prove that the Tosefta is later than Rab. As was mentioned above, Samuel already refers to the Tosefta by title. It is more logical to assume that these passages are later interpolations.

One of the most important problems of the Tosefta is its relation to the Mishnah. Of the various theories propounded to explain this relationship, the hypothesis of Zuckerman is the most far reaching. According to him, the Tosefta represents the original Palestinian recension of the Mishnah, whereas the present Mishnah is actually the revised version of the Mishnah made by the Babylonian Amoraim.<sup>59</sup> Hence the Yerushalmi did not know any other baraita collections than the Tosefta and the Tannaitic compilation. This theory is controverted by all available data, as was thoroughly demonstrated by Hoffmann from whose article<sup>60</sup> the following arguments are drawn:

1. The Tosefta cannot be an independent work since so many passages are unintelligible without reference to the Mishnah.

2. If the Mishnah were redacted in Babylonia, there should have been a Talmud to Zeraim and Taharot.

3. Why do Rab and Samuel give forced interpretations to the Mishnah which they were supposed to have revised?

4. Why did Rab and Samuel allow clauses to be omitted in the Mishnah which made the passage unintelligible and which they explained by the argument *הסורי מחסרא*?

5. Why is the Tosefta quoted as *תני ר' חייא*, or *תני* if it is the Palestinian Mishnah?

6. How can the Yerushalmi correct the Mishnah (as it does, as was pointed out by Frankel, *Mebo-ha Yerushalmi*, p. 19b), if the Tosefta is its Mishnah?

7. The Yerushalmi in innumerable instances presupposes our Mishnah and could not have been changed by Babylonian scholars.

8. Deviations in the Mishnah of the Yerushalmi from that of the Babli are due to explanations given in the Yer., cf. *Hallah* IV, 4 and *Sotah* II, 2.

9. Many passages of the Tosefta differ with the Yer. and agree with the Babli, cf. Frankel, *Mebo ha Yerushalmi*, p. 22b.<sup>61</sup>

59. M. G. W. J. 1874, p. 189ff. His view was partly modified later on cf. his *Tosefta, Mischna und Boraitha*, vol. I, Introduction.

60. *Literaturblatt, Juedische Presse*, 1876, no. 4, p. 14-16. Other scholars who opposed Zuckerman's views are Blau, R. E. J., 67: 1-23, Bacher, *Deutsche Literaturzeitung*, July 1909, p. 1680-3; Schwarz, *Monat*, 1874, p. 367 ff. and his *Die Tosefta des Tractats Nezikin*, p. X-XL; whereas Rosenthal, *Rahmer's Literaturblatt*, 1909, nos. 6-7, and Malter, J. Q. R. N. S., II, 80-95 defended Zuckerman's hypothesis.

61. cf. also Weiss, *Dor*, II.

10. Many passages in the Tosefta were unknown to the Yerushalmi, e. g. T.B.M. XI, 35 was unknown to R. Yohanan, as is evident from Yer. Shebiit VIII, 5, but the Babli was acquainted with it.

Bloch<sup>62</sup> calls attention to the fact that in the Tosefta the author of the Targum is called Onkelos, as he is termed in Babli, and not Akylas, as he is known in the Yerushalmi.

Equally untenable is Schwarz's theory that the Tosefta was originally arranged like the Mishnah, but due to the carelessness of a later editor the paragraphs of the Tosefta were brought into great confusion.<sup>63</sup> He therefore proposed to re-arrange the statements of the Tosefta strictly in the order of the Mishnah. It may be conceded, however, that some passages are evidently misplaced.<sup>64</sup> Furthermore, the difference in sequence in many instances between the *textus receptus* and the Erfurt MS. indicates that we do not have the Tosefta in the original form.

A critical study of the discrepancy between the order of the Mishnah and Tosefta will reveal the fact that the Tosefta often follows an older sequence.<sup>65</sup> Aptowitzer holds the view that the order of the Tosefta is in accordance with the first recension of the Mishnah, but cites no evidence to support his hypothesis.<sup>66</sup> Some instances are here adduced to show that the Tosefta preserved the original and more logical sequence. Thus the very old halakah<sup>67</sup> הכל שוחטין ולעולם שוחטין ובכל שוחטין which is found in Hul. I, 2a was originally placed at the very beginning of the treatise where it more appropriately belongs, as may be inferred from Tosefta Hullin. Thus T. 1-3 = הכל שוחטין T. 4 = לעולם שוחטין and T. 5 = כיצד מצות יבום ... הרי זה קנה. Similarly, T. Yeb. VII. 2c עשה מאמר ובעל preceded M. V., 1a, and was actually the original reading. Furthermore, M Yeb. V, 2a

62. Einblicke in die Geschichte der Entstehung der althebraeischen Literatur, 1884, p. 50.

63. cf. M. G. W. J., 1874, p. 464 f. 1875, p. 274ff.

64. cf. cf. e. g. T. Kid., II, 2, and Pes., IV, 3.

65. cf. Bruell, Jahr. V, 154-8; VII, 140-4; Central Anzeiger, 1891, p. 70.

66. M. G. W. J. 1911, p. 173-174.

67. cf. Schwarz, Tosifta Hullin, p. 6 who pointed out that this was the original reading of the ancient halakah.

כיצד עשה מאמר ביבמתו continues the statement in T. VII., 2 ומודים חכמים לר' גמליאל שיש גט אחר מאמר. The Tosefta seems to have been unknown to R. Judah in Yeb. 52a who gives a forced interpretation of כיצד in the Mishnah.

Similarly, T. Ned. I., 1 בשם הרי זה שבועה . . . pre-supposes that Mishnah I., 2 follows immediately upon M. I., 1a. This is the better order, for M. I., 1b מודרני interrupts the discussion of the old halakah כל כנויי נדרים

T. Peah I., 5-6 shows that M. I., 6 originally followed M. I., 3. Note that M. I. 3 has the phrase אינו נותן אלא משום הפקר and M. I., 6 employs the clause ונותן משום הפקר. Incidentally it may be remarked that T. 6<sup>68</sup> should come immediately after T. 5b, cf. Sifra to Lev. XIX., 9 (ed. Weiss, 87c), where the two passages are together. T. 5b beginning with the words לא נתן מן הקמה is out of place and belongs after paragraph 6. T. Demai, I, 4a demonstrates that this statement in Mishna I, 3b preceded Mishnah I. 3a.

In regard to the discrepancy in sequence between the Mishnah and Tosefta the following observations are to be noted. The order of the Tosefta is either better or worse than that of the Mishnah, or just as perspicuous. When the order in the Tosefta seems to be more confused, it sometimes is due to the fact that the Tosefta has been expanded by later additions and thereby disorder was brought into the sequence of the paragraphs. In such a case it is first necessary to analyze the Tosefta passages and to separate the later accretions from the original text. For example, T. Demai, I, 15-26<sup>69</sup> is obviously a comment upon M. I., 3a. The Tosefta seems to have a double comment upon שמן in Tosefta 18-19 as well as 26. However, a careful examination of paragraphs 15-26 will reveal that some passages have been added on. Originally the Tosefta was composed of the following paragraphs: 15 הלוקח לבהמה 20 הלוקח קמח 23 הלוקח לזרע, 24-25a הלוקח יין, 25b הלוקח קמח, 26 הלוקח פירות

68. In regard to this passage, cf. Horowitz, M. G. W. J. 38 (1894), 199-203.

69. The current editions of the T. present a different order in regard to paragraph 15-23, but it seems that the Erfurt MS. preserved the original sequence.

70. The reference to שמן in T. 18-19 were added later on account of T., 16-17.

26. שמן ערב.<sup>71</sup> The Tosefta would thus only imply two changes in the Mishnah. First בהמה was mentioned before זרע and secondly that the two statements about שמן were put together, as is more logical.

Very interesting for the sequence of the Mishnah is T. Ber. VII, 1-18, which has preserved a different order from that of the Mishnah and in part a more original one. Here too a brief analysis of the Tosefta passage is a prerequisite to the grasping of this problem. T. VII., 1,<sup>72</sup> which seems to be a quotation from a Tannaitic Midrash to Deut. 8:10 not extant serves as a connecting link between Ch. IX and X of the Mishnah. Since M. VIII, 8 discusses the law concerning grace after meals, the Tosefta adduces a passage that gives the Biblical source for the law of ברכת המזון. Secondly, it states the scriptural basis for several points discussed in T. VII and M. IX, e. g. 1)<sup>73</sup> על ההרים וגבעות in M. 2; 2)<sup>74</sup> כשם שאתה מברך על הטובה in Mishnah 5. Since Tosefta VII, 1, serves as an introduction to what follows, its contents throw no light upon the sequence of the Mishnah.

Tosefta 2-6 comment upon M. 1. Tosefta 2 introduces a new point not mentioned in the Mishnah, namely הרואה אוכלוסין. Perhaps originally there was a statement also about אוכלוסין גוים that followed the remark about שעקר עבודה זרה (cf. Ber. 58a). The statement in T. 3 את הכושי ברוך דיין האמת... is brought in here as a supplementary remark to הרואה אוכלוסין and has no bearing upon M. 2 where the benediction ברוך דיין האמת is mentioned. T. 5 הרואה הקשת is out of place and should immediately precede T. 6 הרואה את החמה. Hence it is seen that T. 2-6 imply no difference in the order of the Mishnah.

Tosefta 7-17 comment upon Mishnah 3-5a and show some important deviations in sequence. Thus T. 7a = M. 5a חיים אדם לברך; T. 7b = M. 3c הצועק; T. 9-15 = M. 3a בנה בית חדש; T. 16-17 = M. 4. Hence the sequence of the Mishnah that the Tosefta had before

71. MS. Erfurt reads שמן טוב = spiced wine, cf. Song of Songs, I, 2 לריח שמנים טובים.

72. This passage is cited in part by R. Huna as the view of R. Ishmael in Yer., VII, 1, and in Mekilta Bo., 16, (ed. Friedmann, p.19a-b).

73. For this phrase, cf. Mekilta Yitro, 3.

74. cf. Yer. Ber., VII, 1 מזה שאר כל המצות מעונות ברכה.

it was M. 3, 5a, 3c, 3a and 4. That M. 5a should follow immediately upon M. 2, as the Tosefta has it, is the more logical order. As the Mishnah reads at present, the same rule is repeated in three places. In M. 2b it is stated when the benedictions *ברוך הטוב ומטיב* and *ברוך דיין האמת* are to be recited and in M. 3b a seemingly similar provision is worded<sup>75</sup> *מברך על הרעה מעין הטובה*. In Mishnah 5a the matter is taken up again *חייב אדם לברך על הרעה*. It is interesting to note that the derivation of the latter rule from Deut. VI, 5<sup>76</sup> in M. 5 goes back to R. Akiba,<sup>77</sup> whereas R. Meir (T. VII, 1) finds an intimation for it in Deut. VIII, 10, as does R. Ishmael (Mek., ed. Friedmann, p. 19b).

While in regard to the other points the sequence of the Tosefta is inferior to that of the Mishnah, nevertheless the order of the latter requires explanation. At first glance the relation between the statement *בנה בית חדש... אומר ברוך שהחיינו* and the previous paragraph is not clear. However, it seems that the Mishnah is a bridged from a longer statement which originally read *בנה בית חדש... שלו ושלו אחרים הטוב ומטיב* as does the baraita in Ber. 59b. Similarly, M. 3c<sup>78</sup> *יהי רצון שתלך אשתי זכר* seems to be entirely out of place in this chapter which deals with benedictions and not with prayers. But here too it may be conjectured that the baraita<sup>79</sup> *א"ל ילדה אשתו זכר אומר ברוך הטוב* Ber. 59b was originally inserted in the Mishnah and by the process of association of ideas M. 3c was added. Hence M. 4 mentions the prayer upon entering a city and M. 5b the regulations to be observed upon entering the Temple grounds.

75. The meaning of this passage is not clear to me. The amoraic interpretation of it in Babli 60a, does not represent the original sense of the statement.

76. While the proof for the statement that *חייב אדם לברך על הרעה* is from the phrase *ומדה שהוא מודר לך הרעה* the Mishnah first quotes other interpretations of the verse, thereby obscuring the force of the word *שנאמר*. It appears that this passage is a quotation from a Tannaitic midrash.

77. As is evident from Sifre Deut. 32 and Midrash Tannaim, p. 26.

78. For the prayer in T. VII. 7 *ברכה בהן שתיכנסם*, cf. T. Shab. VII. 22 where the identical phrase is used.

79. Prof. Ginzberg is of the opinion that the old halakah read *ילדה אשתו זכר אומר שהחיינו* cf. Elijah of Vilna to Orah Hayyim, 223, I.

Often in dealing with the problems of sequence we are confronted with the fact that the T. has double comments upon the Mishnah in different places. Thus Mishnah Ber. V. 1 is explained in T. III. 17 and 21-22; and M. V. 2 is supplemented in T. III., 9 and 24. The matter becomes clear when we realize that T., ch. IV, is derived from two sources: (1) T. 1-20, (2) 21-26. The first source T. 1-20 implies a different and more logical order from that in our M. Thus the sequences it had was M. IV, 1,3,4, V, 2; IV, 7; IV, 5-6, and V 1. This results from the following comparison: T 1-2 = M. IV, 1; T. 3-5 = M. IV, 3; T. 6 = M. IV a; T. 7 = M. 4b; T. 9 = M. V 2; T 10-13 = M. IV, 7; T. 14-16 = M. IV, 5-6; T. 17-20 = M. V, 1.

The second source T. 21-26, however, implies the same sequence as our Mishnah. Thus T. 21-22 = M. V, 1; T. 24 = M. V, 2; T. 25 = M. V, 3; T. 26 = M. V, 4.

En passant, it may be explained why the statement מורים מורים משתקים אותם is brought in M. 3. It seems that our M. harks back to an old halakah similar to the baraita in Ber. 33b where we read הקרא את שמע וכופלה הרי זה דבר מגונה. Perhaps this rule applied also to the Amidah, and consequently it would be logical to expect the statement about מורים מורים. It is also possible that M. 3 refers to T. 25 בולל של מינים בשל פרושים.

On the other hand, it is difficult to explain how M. IV, 2, giving the short prayer of R. Nehunyah b. Ha-Koneh, came in as it interrupts the context. It would be more appropriate after M. 4 which also deals with תפילה קצרה. Perhaps it is derived from a collection of prayers, such as Ber. IX, 3b, 4, and B. M. 42a. T. Ber. IV, 3 presupposes that the statement אין מברכין על היין in Ber. VII, 5 was originally in M. VI, 1 which is decidedly the better order.<sup>80</sup>

Occasionally, the transition between paragraphs in the M. appears to be very abrupt. This is often due to the fact that the compiler was anxious to be as brief as possible. In the T. we find the statement that was left out. Thus, M. Pes. VI, 3 אימתי מביא חגיגה עמו is very loosely connected with the preceding paragraph. However, the missing link is found in T. Pes. V 2,

80. Cf. Hoffmann who has shown that the earlier order for M. Pes. X is found in the T., cf. לער לחכמים, בית וער לחכמים, (ed., Daiches), no. 2, p. 17-18.



הפסח בא מן הצאן which makes it clear why the M. has passage at this point.<sup>81</sup> Similarly M. Shab. I, 4, referring to the eighteen enactments, is explained later in our analysis of the treatise of Shabbat.

To sum up, the above examples which may be multiplied many-fold, illustrate the fact that the order of the statements in the Tosefta goes back to older and different collections and in numerous cases actually represents the better and more original sequence. This would not presuppose that the Tosefta went thru a series of redactions at a time previous to our Mishnah.<sup>82</sup> The first redaction of the Tosefta could have taken place after the completion of R. Judah's Mishnah, and the older arrangement of the Tosefta is due to the peculiar method of combining various sources used by the ancients in the compilation of tradition. That the compilers of the T. intended to elucidate and supplement our Mishnah is obvious from the fact that many of its comments can be understood only in connection with the Mishnah. The material of the M. is mostly taken up in the same order in the corresponding chapter of the Tosefta. On the other hand, the discrepancy in sequence and the occasional instances, where passages of the M. are transposed in a different chapter and context in the Tosefta, are due to the fact that the compiler took over a series of statements from an earlier source without making any changes which would be necessary to make it logically fit in its new location.

It is true, for example, that T.B.K. IX 1<sup>83</sup> שלשה עשר הן אבות נזיקין should more logically be placed at the beginning of the treatise. Still it can be explained why the compiler of the T., who had the present Mishnah of B. K. before him, inserted the statement שלשה עשר הן אבות נזיקין in the middle of the treatise. Inasmuch as he was familiar with the source of this statement, which placed it in connection with <sup>84</sup> דיני חבלות, and since the clause נוק צער etc. in the T. actually does belong as a comment upon M. VIII, 1,

81. Cf. Hoffmann in J. J. L. G., VII, 315 who points out a similar case in Hullin, ch. IX. 1.

82. Cf. Frankel, *דרכי המשנה* p. 306.

83. This corresponds to the baraita of R. Hoshaya in B. K. 4b.

84. It was indicated above why T. B. K., IX, 1 originally headed the discussion on damages done to persons.

the compiler preferred to retain the statement in its old context. The idea of rearranging the mass of traditions strictly according to the M. would have been foreign to the ancient principles of literary composition. For it would have involved the extraction of individual passages out of their context and their regrouping according to the M. The method of the Tosefta compiler was rather to dovetail larger extracts from various sources containing frequently a considerable amount of material, without any real attempt to fit them in with the arrangement of the Mishnah. This method of utilizing the sources will explain the numerous repetitions<sup>85</sup> and contradictions in the T.

This leads us into an inquiry as to the structure of the Tosefta. The various kinds of statements in the Tosefta have been atomically classified and tabulated by A. Guttman.<sup>86</sup> But for the understanding of the composition of the T., it is significant to bear in mind the three following classes: (1) Passages which presuppose our Mishnah, and cannot be understood except in reference to it. These statements form the T. in the narrower sense of the word. (2) Passages containing new halakah and not directly bearing upon the M. These are supplements (in the larger meaning of the word) to the M. (3) Repetitions of the M. often with explanatory glosses.

While it is possible that these different classes of comment are derived from different sources representing divergent schools, and were combined by the compilers of the T., nevertheless, from the method of citation of baraitot in the Talmud, another reason seems apparent. In the Talmud, where a baraita is quoted, that part of it is frequently cited, which is needed for the understanding of the discussion. Occasionally the quotation is almost too brief; thus in Ket. 94b, the baraita יעשה . . . וחכמים אומרים would barely be intelligible without the parallel passage in Git. 14b, where it is given in full.<sup>87</sup> On the other hand, the Talmud does quote in extenso a

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85. On the repetition of passages in Tannaitic and midrashic sources, cf. also Albeck, Introduction to Bereshit Rabbah, p. 2, note 3.

86. Das redaktionelle und sachliche Verhaeltniss zwischen Mischna und Tosefta, Breslau 1928.

87. Cf. also B. M., 34a תניא חוץ מגזירותיה וקדושתיה which is just a fragment of the baraita.

very long baraita, when only a small part of it was necessary for the discussion, cf. e. g. Kid. 53a.

What is difficult to account for are the passages in the T. which repeat the M. without any comment. In a work like the T., which is a supplement to the M., one would not expect them. In the Talmud, baraitot which repeat the M. without adding anything new, are extremely rare, cf. e. g. B. M. 6a.<sup>88</sup> דתני ר' חייא שניהם נשבעים ונוטלים מבעל הבית. Perhaps the purpose of R. Hiyya's statement was to indicate that this was the actual practice and not the opposing view of Ben Nanas, which is also mentioned in the M.

In his monograph on the relationship of the Mishnah to the Tosefta, A. Guttman has given a detailed analysis of the difference between the individual passages of the Mishnah and the Tosefta, but he has failed to point out that a comparison between the T. and the baraitot will show that the baraitot may be classified exactly in the same manner as the Tosefta. Such data as presented by the author, throw great light on the composition and structure of the Tosefta, but do not advance materially our understanding of the relation between the Mishnah and the Tosefta, inasmuch as these facts do not exclusively apply to the Tosefta.

The problem of the relation of the T. to the baraitot in the Talmudim is a twofold one. The first question is, in what way did the Tosefta compilation as a whole differ from the Baraitot as collections. Secondly, what is the relation of the individual passages of the T. to those in the baraitot? It is difficult to present a definite solution to the first problem. We only know how the T. is arranged, but the baraitot in the Talmud have only been preserved as quotations and are not in their original contexts. We may conjecture, however, that the chief purpose of the baraitot was to elucidate the Mishnah and the baraitot collections were arranged accordingly. The aim of the Tosefta was to supplement the Mishnah. These two aims are not mutually exclusive. It is rather a matter of emphasis. Good elucidation is sometimes furthered by adding new material, whereas an excellent way to impart supplementary information is to offer interpretation of a given text.

88. Cf. Rashi and Tosafot, l. c. who noticed this fact. Tosafot suggests that R. Hiyya's baraita was the source for the Mishnah; cf. also Sanh. 14b דמיו ידועין דשני שאין מעשר שני איזהו מעשר שני which adds nothing new to M. Maaser Sheni, IV, 2.

As to the relation of the individual paragraphs in the T. to the baraitot, Frankel<sup>89</sup> has already pointed out that often the T. agrees with the Yer., and less frequently with the Babli and in numerous instances with neither. However, the problem is more complicated than Frankel's simple observation would lead us to believe. It is not always an easy matter to decide definitely when a T. passage agrees with the Babli or Yerushalmi. For there are not many passages in the Tosefta that are found verbatim in the Talmudim. While the contents of a great number of statements in the T. are substantially the same as the parallel baraitot in the Talmudim, in most cases there are minor or major phraseological differences which may indicate that they are derived from divergent sources.<sup>90</sup> For it is well known that baraitot collections of different schools formulated their halakah differently. On the other hand, the discrepancy between the reading of the Tosefta and the baraita, when it is slight, may be due to the fact that it merely represents a variant text.

To illustrate, it may be well to cite several instances: T. Pes. I, 1 is current in three versions, two of which are found in the Babli and one in the Yerushalmi. One version is found in the baraita of Samuel in Babli 3a, and 7b.<sup>91</sup> It differs from the T. in the following ways.—(1) It has the explanatory variant לילי instead of אור<sup>92</sup> (2) It leaves out the supplementary statement אין בודקין לא לאור. ההמה, (3) and it derives the law of בריקה from four verses instead of two, as does the T. The second version is presented in a baraita (Babli 7b-8a) introduced by the formula ת"ר.<sup>93</sup> It, too, diverges from the T. in the following manner: (1) It doesn't repeat the

89. Mebo ha-Yerushalmi, 1870, p. 22-23.

90. Thus, sometimes the addition of one word might indicate a difference in source. T. Shab. I, 2 reads as follows: אִיוּ הִיא רְשׁוּת from Babli 6a where this text is quoted with the additional word וְהַמְרִבֵּר, it may be assumed that the baraita is derived from a different source than our Tosefta, cf. also the explanation of Abaye.

91. In 7b the reading Ishmael is undoubtedly an error for Samuel.

92. Hence, R. Judah, a pupil of Samuel in Pes. 2a, explains לילי as אור whereas R. Huna interprets it as נגהי.

93. This baraita was known to the following amoraim who commented upon it: Raba, R. Nathan b. Isaac, R. Zebid, R. Papa and Rabina.

Mishnah; (2) it adds the word **אָבִיקָה**<sup>94</sup> not found in the Tosefta, (3) it, too, derives the law from four verses.<sup>95</sup> The third version' which is the shortest and is found in Yer. Pes. I 1, differs as follows: (1) It doesn't repeat the M.; (2) in the supplementary statement it adds **וְלֹא לְאֹרֵי הַכּוֹבֵבִים**. (3) it omits the Biblical verses. Hence the uncertainty in Palestine as to the Biblical source of the law. R. Mana derived it from an entirely different verse than the one found in the T., whereas R. Samuel b. Isaac knew of two traditions concerning the Biblical intimation for the custom of **בְּרִיקָה**. One derived it from Zephaniah and the other from Proverbs. In the T. both verses are considered the source. From this passage it is seen that it is not always simply a question of determining the relation of the Tosefta to the Babli or Yerushalmi, for in both Talmudim various traditions were current, and thus it would not be exact to speak of a Palestinian or a Babylonian tradition.

Similarly, T. I 2, which explains the view of B. Sh. and B. H. in regard to **שְׁתֵּי שׁוּרוֹת בְּמִרְתָּהּ** presents some complications. The explanation in the Tosefta of B. Sh.'s view is found literally in a bar. in Babli 8b, and is said to agree with R. Yohanan's view. In Yer. I 1, it seems that the statement in the name of Rab **גַּם קֵלְפֵנוּ כַּמִּין גַּם** is in accord with our T. As for B. H.'s view, it is clear that Rab's<sup>96</sup> statement in Babli 8b, which goes back to R. Hiyya, **עֲלִיּוּנָה וְשִׁלְמָטָה הֵימָנָה** implies the same view as expressed in the Tosefta. A literal agreement with the second statement of the T. is found in Yer. **תְּנִי שִׁלְמָטָה הֵימָנָה**.

In the Talmud, views opposed to the T. are also recorded. First in regard to B. Sh.'s view, a baraita in Babli 8b, supposed to represent R. Judah's opinion, most likely following Samuel, and a baraita of Bar Kappara in Yer. I 1. **קֵלְפֵנוּ כַּמִּין שְׁנֵי נִמִּין** contradict our T. As for the interpretation of B. H.'s view, Samuel's<sup>97</sup> opinion in the Babli and R. Yohanan's statement in the Yer. are at variance with the Tosefta.

94. This reading was unknown to R. Samuel b. R. Isaac, who inquired **מֵהוּ לְבָרוּק לְאֹרֵי הָאֲבִיקָה** (Yer. Pes. I, 1).

95. R. Hisda, who derived the law from verses, was familiar either with the baraita of Samuel or the **ת"ר**.

96. cf. Babli, 8b **ר' חִיָּיא תְּנִי כּוֹתִיָּה דְּרַב**.

97. Cf. Babli, 8b **כּוֹלְהוּ תְּנֵאִי תְּנֵי כּוֹתִיָּה דְּשִׁמּוּאֵל**.

To sum up, the first part of the T. is preserved verbatim in the Babli, the second part, in the Yerushalmi. The Palestinian amoraim, Bar Kappara and R. Yohanan, in part, as well as the Babylonians Samuel and Judah, opposed the view of the Tosefta, whereas Rab's interpretation was in accordance with it.

T. I, 3a enumerates twelve places that do not require בדיקה, and 3b, states the view of R.S.h.b.G. about בדיקה in regard to a bed. In Yer. Pes, I, 1 a baraita is cited which mentions thirteen places where בדיקה is unnecessary. The additional place is אוצרות פירות. Furthermore, instead of<sup>98</sup> העלייה וגג הכר of the Yer., the Tosefta has גג הבית וגג המגרל. In regard to the view of R.Sh. b.G. there are some slight changes. The T. has החוצצת את כל הבית, whereas, the Yer. reads<sup>99</sup> חוצצת בתוך הבית. Instead of the phrase in the T. ועצים ואבנים מונחים תחתיה, the Yer. has ועצים ואבנים, תחתיה.

It is difficult to decide whether these differences are to be regarded as variants and hence the Yer. would be a literal citation from the Tosefta, or whether, these changes imply a different source. In any event, it is clear that the baraitot quoted in the Babli, which vary considerably from the Tosefta, betray a different origin. T. I. 4a is cited in Babli 6a and Yer. I. 1, with enough changes to warrant the assumption that the baraitot are not a direct quotation from the T. Thus, Yer. has<sup>100</sup> היוצא לפרש קודם instead of T. היוצאין בשיירה והפורשין בספינה לפני; and in place of Yer. בודק ומשכים והולך לדרכו, the T. has המפרש והיוצא בשיירה. In the Babli 6a, it is given in the name of Rab, קודם ל' יום אין זקוק לבער תוך ל' יום זקוק לבער. An exhaustive comparison of the Tosefta with the baraitot in the Talmud will reveal the same facts as adduced in the illustrations just cited. In accordance with our assumption that the Tosefta was redacted shortly after the Mishnah, those baraitot in the Talmud which agree verbatim with the Tosefta, are most likely derived from the latter, whereas, the baraitot, which differ considerably from the T. in the formulation of the halakah, are to be traced to other sources.

98. Some medieval authorities seemed to have read גג המגרל in the Yer., cf. Ratner, p. 6. Perhaps it came in from the Tosefta.

99. Cf. Babli, 8a, which reads החולקת בתוך הבית.

100. A late authority has the reading היוצא והמפרש, cf. Ratner, p. 7.

This leads us to the question whether the amoraim knew our Tosefta. Modern scholars who dealt with this problem usually raised the question whether the Talmud was acquainted with the Tosefta. Inasmuch as the knowledge of tannaitic traditions possessed by the various amoraim was unequal, it is more to the point to inquire whether the amoraim were familiar with our Tosefta.

It has been assumed by some medieval authorities, such as R. Simson of Chinon,<sup>101</sup> and R. Eliezer B. Nathan,<sup>102</sup> as well as by a number of modern scholars, such as Hoffmann,<sup>103</sup> Albeck,<sup>104</sup> Schorr<sup>105</sup> and Schwartz,<sup>106</sup> that the Tosefta was unknown to the Talmud. This conclusion was based upon the observation that questions are raised in the Talmud, for which satisfactory solutions are found in the T., but no allusion is made to them.<sup>107</sup>

In itself, the hypothesis that the T. was unknown to the amoraim is tenable, for we do find that later authorities were acquainted with the contents of early books, which remained unknown to earlier scholars. Certain ideas of Philo and views of Josephus have penetrated into the Zohar, although they left no trace in early rabbinic literature.<sup>108</sup> Maimonides was acquainted with some Tannaitic midrashim unknown to the amoraim.<sup>109</sup>

101. Cf. above note 38.

102. גאון, ed. Prague, 145d.

103. Magazin, 1882, p. 153ff.

104. M. G. W. J., 69, p. 328.

105. Schorr, משנת ר' יעקב, 1930, p. 23-25.

106. Commentary on T. Zeraim passim.

107. Cf. e. g. T. Ber. IV, 2 unknown to Babli 38a; T. Shab., X, 1 unknown to R. Yohanan; cf. Babli, 6a; Shab., XIII, 4a, unknown to Babli 115b; Ket., II, 3 (p. 262, 1, 27) to Babli, 26a; T. Ket., XI, 1 unknown to R. Yohanan, Babli, 96a; Ned. VI, 7b unknown to Rabina, Babli, 73a; Mak, I, 7 unknown to Ulla Babli, 4b; Meilah, I, 1 unknown to Rabbah, Babli 2b; Kelim, B. K., VII, 16 unknown to Babli Shab., 16a, cf. Tosafot, s. v. נל. Other examples are given by Schorr, cf. note 105.

108. Cf. Ginzberg, Legends V, 109, note 98, concerning the notion that demons are the souls of the wicked. This view is also found in Augustine, City of God, IX, 11; cf. Heller, J. Q. R. N. S., 25: 43.

109. It is doubtful whether R. Eliezer of Beaugency's interpretation of Ezekiel, 26:20 ונתתי צבי as קיום והצבה which agrees with the LXX translation (this was overlooked by Poznanski) goes back to a literary Jewish tradition. He may have hit upon the idea himself, or learned it from a Christian clergyman.

On the other hand, since the Tosefta is actually quoted by title in the Talmud, and it constituted one of the disciplines every Tanna (memorizer) had to master it is natural to assume that the amoraim were acquainted with the Tosefta. Furthermore, the fact that certain passages of the T. were unknown to the amoraim, would not prove that the compilation as a whole was not current among them. That fact would only indicate that the amoraim had an imperfect and incomplete knowledge of the T., or in some instances may only prove that the authority of the T. was not recognized. Since the amoraim were not versed in the Tosefta, it is not to be expected that they would have a thorough knowledge of it. Thus in Erubin 102a we read בעי ר' זירא נקמו מהו אמר ר' יוסף מאי תיבעי לך לא שמיע ליה הא דתניא נשמט אסור which is found literally in T. Er. XI. 18, whence it is seen that R. Zera was not acquainted with this passage of the T., but R. Joseph was. Similarly, T. Shab. XI. 4b הנותן שמן was known to R. Judah, but not to Ulla, cf. Bezah 22a; T. Shab. XII 7b. ולמתכסה בטלית נמצא צפרת בתוכה was known to Rab, but not to R. Nahman b. Isaac, cf. Shab. 107a; T. Shab., XIII. 4 was known to R. Hamnuna but not to Rabba b. R. Huna and R. Ashi.

It is difficult to ascertain to what extent the amoraim were conversant with the Tosefta. The latter, as mentioned above, is only once cited by title. Hence when the amoraim cite or comment upon baraitot which are found in the Tosefta, one may not infer with certainty that they are derived from that collection. This is true not only in the case where the baraitot present some divergencies from the T., but even where there is literal agreement. Nevertheless, the quotation and discussion of baraitot for which there are parallels in the Tosefta, may serve as an indication of the knowledge of the T. possessed by the amoraim. In the following is presented a list of amoraim who might have been acquainted with passages of Tosefta Shabbat.



LIST OF AMORAIM WHO CITE OR DISCUSS BARAITOT  
FOUND IN T. SHABBAT

|       |                     |              |
|-------|---------------------|--------------|
| Abaye | T. I. 2             | Shabbat 6b   |
| "     | I. 8                | " 11b        |
| "     | II. 3               | " 25b        |
| "     | II. 4               | " 21a, 26a   |
| "     | II. 8b              | Erubin 104a  |
| "     | III. 9              | Shabbat 43a  |
| "     | III. 10             | " 42b, 117b  |
| "     | III. 12             | Bezah 36b    |
| "     | III. 13-14a         | Shabbat 44a  |
| "     | IV. 6               | " 138a       |
| "     | IV. 11              | " 65a        |
| "     | IV. 12 <sup>1</sup> | " 66b        |
| "     | VIII. 7             | Zebahim 47a  |
| "     | VIII. 8d            | Shabbat 78a  |
| "     | VIII. 11            | " 78b        |
| "     | VIII. 12            | " 78b        |
| "     | VIII. 34            | " 94a        |
| "     | IX. 4b              | Bezah 39a    |
| "     | IX. 15-16           | Shabbat 103a |
| "     | X. 2                | " 100a       |
| "     | XI. 2               | " 103a       |
| "     | XII. 4a             | " 106b       |
| "     | XII. 4b             | Bezah 24a    |
| "     | XII. 12b            | Shabbat 134a |
| "     | XII. 14b            | " 134a       |
| "     | XIII. 17            | " 123a, b    |
| "     | XIV. 1              | " 123b, 122b |
| "     | XIV. 3              | " 125a       |
| "     | XV. 1               | " 128b       |
| "     | XV. 2               | " 128b       |
| "     | XVII. 11            | " 150a       |
| Abba  | I. 13               | " 12b        |
| "     | VIII. 4             | " 106a       |
| "     | XIII. 15            | " 47a        |
| "     | XIV. 3              | " 126a       |

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1. T. IV. 13 not known to Abaye, as appears from Shabbat 65b.

|               |                    |              |                           |
|---------------|--------------------|--------------|---------------------------|
| Abin          | VIII. 33           | Yer. Shabbat | VIII. 3                   |
| Ada b. Ahawa  | IV. 13             | "            | VI. 7                     |
| Ada b. Matnah | VIII. 34           | "            | 94a                       |
| " " "         | XI. 10b            | "            | 8a                        |
| Aha           | III. (IV.) 1       | "            | III. 1                    |
| "             | (III.) 5           | B. K. 71a    |                           |
| "             | XVII. 16           | Yer. Erubin  | IV. 1                     |
| Aha of Difti  | III. 12            | Bezah        | 21b                       |
| Aha b. Jacob  | XVIII. 6           | Erubin       | 104a                      |
| Aha b. Papa   | XII. 15d           | Shabbat      | 113a<br>and Y. Shab. V. 2 |
| Amemar        | XIV. 8             | Shabbat      | 128a                      |
| Ami b. Abin   | II. 8              | Keritot      | 20a                       |
| Ashi          | I. 4               | Shabbat      | 6b                        |
| "             | II. 8c             | Keritot      | 20a                       |
| "             | (III.) 5           | B. K. 71a    |                           |
| "             | III. 12            | Shabbat      | 143a                      |
| "             | VIII. 8c           | "            | 77b                       |
| "             | VIII. 11           | "            | 78b                       |
| "             | VIII. 12           | "            | 79a                       |
| "             | VIII. 21a          | "            | 80a                       |
| "             | XI. 7              | "            | 104b                      |
| "             | XIII. 1            | "            | 116b                      |
| "             | XIV. 3             | "            | 125a                      |
| "             | XV. 4a             | "            | 133b                      |
| "             | XV. 4d             | "            | 133b                      |
| Asi           | V. 2b <sup>2</sup> | "            | 50a                       |
| Bar Kappara   | III. 3             | "            | 40a                       |
| Bibi b. Abaye | IV. 1              | "            | 54a                       |
| Bo            | XIII. 16           | Yer. Shabbat | VI. 1                     |
| Bun b. Hiyya  | XI. 12             | "            | XI. 5                     |
| Elazar        | I. 12a             | "            | I. 3                      |
| "             | II. 4              | "            | II. 3                     |
| "             | II. 8c             | Keritot      | 20a                       |
| "             | VIII. 7            | Shabbat      | 76a                       |
| "             | IX. 13             | "            | 95a                       |
| "             | XIII. 17           | Yer. Shabbat | XVII. 1                   |
| "             | XIV. 1             | "            | XVII. 1                   |
| Haggai        | I. 23              | "            | I. 5                      |
| Hama          | III. 15            | Shabbat      | 47b                       |

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2. T. I. 21 unknown to Asi, as appears from Shabbat 18a, while T. VIII. 14b is contradicted by him in Erubin 100b.

|                            |               |                     |
|----------------------------|---------------|---------------------|
| Hamnunah                   | XI. 12        | Yer. Shabbat XI. 5  |
| "                          | XIII. 4       | Shabbat 115b        |
| Hanan b. Ami               | (III.) 5      | B. K. 71a           |
| Hananiah                   | III. 11       | Yer. Bezah V. 1     |
| Hananiah b. Abin           | II. 8         | Keritot 20a         |
| Hananiah b. Hillel         | XI. 12        | Yer. Shabbat XI. 5  |
| Hanin                      | XVII. 1       | Shabbat 149a        |
| Hanina                     | II. 8c        | Keritot 20a         |
| "                          | IV. 8         | Yer. Shabbat VI. 2  |
| Hezekiah                   | IV. 1         | " " V. 1            |
| Hillel b. Samuel           | VIII. 33      | Shabbat 80a         |
| Hisda                      | II. 1b        | " 23b               |
| "                          | III. 4a       | " 39b               |
| "                          | III. 9        | Yer. Bezah V. 1     |
| "                          | III. 15b-17   | Shabbat 141b        |
| "                          | IV. 8         | " 60b               |
| Hiyya                      | (III.) 4      | Yer. Shabbat III. 1 |
| "                          | III. 8        | Shabbat 42a         |
| "                          | III. 15b-17   | " 141b              |
| "                          | IX. 17        | Yer. Shabbat VII. 2 |
| "                          | X. 9          | " " I. 1            |
| Hiyya b. Ashi <sup>3</sup> | III. 15b      | " " VI. 2           |
| Hoshaya                    | X. 7          | " " I. 1            |
| Huna                       | VII. 23b      | Sanhedrin 101a      |
| "                          | VIII. 34      | Yer. Pesachim IV. 3 |
| "                          | XII. 14       | " Shabbat XII. 1    |
| "                          | XV. 10        | Shabbat 137a        |
| "                          | XVI. 22       | " 12a               |
| Huna b. Hinnenah           | XI. 12        | Erubin 67b          |
| Huna b. Hiyya              | XIII. 15      | Shabbat 47a         |
| Huna b. Joshua             | XIII. 12      | " 143a              |
| " " "                      | IX. 21-22     | Yeb. 114a           |
| Ika b. Hananiah            | (III.) IV. 4a | Shabbat 39b         |
| Ila                        | V. 8          | Yer. Shabbat VI. 9  |
| "                          | XI. 12        | " " XI. 5           |
| "                          | XI. 17        | " " XVII. 1         |
| Isaac b. Elazar            | II. 5         | Shabbat 29b         |
| Jacob b. Aha               | II. 8c        | Yer. Shabbat II. 5  |
| " " "                      | XI. 3         | " " XII. 1          |
| Jeremiah                   | I. 12b        | " " I. 3            |
| "                          | VIII. 8d      | Shabbat 78a         |

3. T. (III) 4 was unknown to Hiyya b. Abba, as appears from Shabbat 37b, 38a.

|                   |                        |              |        |
|-------------------|------------------------|--------------|--------|
| Jeremiah b. Abbah | I. 12b                 | " 12b        |        |
| Jonathan          | IV. 9                  | Yer. Shabbat | VI. 2  |
| Jose              | I. 21                  | " "          | II. 1  |
| "                 | II. 4b                 | " "          | II. 3  |
| "                 | (III.) IV. 1           | " "          | III. 1 |
| "                 | VIII. 23               | " "          | VII. 2 |
| Jose b. Bun       | I. 8                   | " "          | I. 3   |
| " " "             | IX. 13                 | " "          | VII. 2 |
| " " "             | IX. 20                 | " "          | VII. 2 |
| " " "             | XI. 15                 | " "          | XI. 5  |
| " " Hanina        | III. 15b               | " "          | VII. 2 |
| Joseph            | I. 4                   | " "          | I. 1   |
| "                 | I. 8                   | Shabbat      | 11b    |
| "                 | I. 23 <sup>4</sup>     | "            | 18a    |
| "                 | III. 5                 | "            | 40b    |
| "                 | IV. 6                  | "            | 138a   |
| "                 | V. 13                  | "            | 62a    |
| "                 | VIII. 8b               | "            | 77a    |
| "                 | VIII. 12               | "            | 78b    |
| "                 | IX. 15-16              | "            | 103a   |
| "                 | XII. 4a                | "            | 106b   |
| "                 | XVIII. 4               | "            | 155b   |
| Joseph b. Hama    | XVIII. 7-8             | B. M.        | 58a    |
| Joshua b. Levi    | III. 7a                | Yer. Shabbat | XIX. 3 |
| Judah             | VIII. 2b <sup>5</sup>  | " "          | XII. 1 |
| "                 | IX. 11-12              | Shabbat      | 94b    |
| "                 | XI. 4b                 | Bezah        | 22a    |
| "                 | XIV. 12                | Shabbat      | 128a   |
| "                 | XV. 2                  | "            | 128b   |
| Judah b. Pazzi    | III. 4a                | Yer. Shabbat | III. 3 |
| " " "             | XVI. 20                | " "          | III. 3 |
| Judan             | II. 8c                 | " "          | II. 5  |
| Kahana            | V. 9-10                | Bezah        | 33b    |
| "                 | XV. 4a                 | Shabbat      | 133b   |
| Mana              | I. 8                   | Yer. Shabbat | I. 3   |
| "                 | (III.) IV. 1           | " "          | III. 1 |
| "                 | (III.) 5               | " "          | III. 1 |
| "                 | (III.) 11 <sup>6</sup> | " "          | III. 1 |

4. T. I. 21 was unknown to R. Joseph, as may be inferred from Shab. 18a, and similarly T. (III) 4 as may be seen from Shab. 37b, and 38a.

5. T. IV. 3a was not known to Judah, as appears from Shab. 54a.

6. T. VIII. 33 unknown to R. Mana, as is evident from Yer. Shab. VIII. 3.

|                 |                       |                            |
|-----------------|-----------------------|----------------------------|
| Mar Zutra       | III. 13-14a           | Shabbat 44a                |
| " "             | XIV. 13-15            | " 140a                     |
| Matnah          | IV. 8                 | " 60b                      |
| Nahman          | XVI. 10               | " 123a                     |
| Nahman b. Gurya | IX. 13                | " 95a                      |
| " b. Hisda      | V. 12                 | " 147a                     |
| Nahman b. Isaac | (III.) 7 <sup>7</sup> | Hullin 15a                 |
| " " "           | III. 5                | Shabbat 40b                |
| " " "           | XII. 8                | " 107a                     |
| " " "           | XII. 13c              | " 109a                     |
| Papa            | IV. 2                 | " 53a                      |
| "               | IV. 9                 | " 61a                      |
| "               | VII. 19-20            | Abodah Zarah 11a-b         |
| "               | XIV. 4b               | Erubin 104a                |
| "               | XV. 4a                | Shabbat 133b               |
| Rab             | I. 6                  | " 9a                       |
| "               | I. 12b                | " 12b                      |
| "               | (III.) 4              | Shab. 38a, Y. Shab. III 1  |
| "               | (III.) 5              | Hullin 15a, Y. Shab. III 1 |
| "               | (III.) 7              | Bezah 17b                  |
| "               | III. 13-14a           | Yer. Shabbat III. 7        |
| "               | IV. 1                 | " " V. 1                   |
| "               | VIII. 5               | Shabbat 68b                |
| "               | X. 1a                 | " 97a                      |
| "               | X. 9 <sup>8</sup>     | Yer. Shabbat I. 1          |
| "               | XIII. 5               | " " XVI. 6                 |
| "               | XV. 3                 | Shabbat 129b               |
| "               | XV. 4c                | " 134b                     |
| Raba            | II. 1a <sup>9</sup>   | " 29a                      |
| "               | II. 4                 | " 26a-b                    |
| "               | II. 8                 | Keritot 20a                |
| "               | III. 3                | Shabbat 40a                |
| "               | VIII. 2c              | " 75a                      |
| "               | VIII. 11              | " 78b                      |
| "               | VIII. 12              | " 79a                      |
| "               | VIII. 34              | " 94a                      |
| "               | IX. 11                | " 80a                      |
| "               | XIV. 1                | " 122b, 123b               |
| "               | XIV. 3                | " 125a                     |

7. T. (III.) 4 was unknown to Nahman b. Isaac, as may be inferred from Shab. 37b-38a.

8. T. XII. 15d is contradicted by Rab. see Shab. 113a.

9. T. I. 13 was unknown to Raba, as is evident from Shab. 12b.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| Rabbah                       | I. 12a                 | " 12a               |
| "                            | I. 23                  | " 18a               |
| "                            | II. 3a <sup>10</sup>   | " 25b               |
| "                            | III. 5                 | " 40b               |
| "                            | IX. 15-16              | " 103a              |
| Rabbah b. Abbuah             | IX. 7                  | " 90a               |
| " " "                        | XIII. 16               | " 149a              |
| Rabbah b. Huna               | XI. 7                  | " 104b              |
| " " "                        | XII. 4b <sup>11</sup>  | Bezah 24a           |
| Rabbah b. Joseph             | III. 4a                | Shabbat 39b         |
| Rabbah b. Samuel             | I. 13                  | " 13a               |
| Rabina <sup>12</sup>         | (III.) 5               | B. K. 71a           |
| Resh Lakish                  | III. 15a <sup>13</sup> | Shabbat 45b         |
| " "                          | IX. 20                 | " 74b               |
| " "                          | XI. 5b                 | Bezah 34a           |
| Safra                        | XI. 5                  | Shabbat 101b        |
| Samuel                       | I. 11a <sup>14</sup>   | Shabbat 12a         |
| "                            | (III.) 5               | Yer. Shabbat III. 1 |
| "                            | III. 12                | Bezah 36b           |
| "                            | III. 13-14a            | Yer. Shabbat III. 7 |
| "                            | IV. 2                  | Shabbat 53a         |
| "                            | V. 6b                  | Erubin 102b         |
| "                            | VIII. 5                | Shabbat 68b         |
| "                            | VIII. 19               | Y. Shabbat VIII. 4  |
| "                            | X. 1a                  | Shabbat 97a         |
| "                            | XII. 4b                | Bezah 24a           |
| "                            | XV. 4c                 | Y. Shabbat XIX. 3   |
| "                            | XV. 9c                 | Shabbat 137b        |
| "                            | XVII. 9                | Shabbat 150a        |
| Samuel b. Abba               | III. 23                | Y. Shabbat IV. 3    |
| Samuel, brother of Berechiah | XII. 13c               | " " XIV. 3          |
| Sheshet                      | IV. 8                  | Shabbat 60b         |
| "                            | IX. 4                  | Bezah 39a           |
| "                            | XII. 4a                | Shabbat 106b        |
| Shimi                        | XIII. 15               | Y. Shabbat XII. 1   |
| Simon b. Karsenah            | (III.) 6               | " " III. 1          |

10. T. I. 21 and (III.) 4 were unknown to Rabbah, as may be inferred from Shab. 18a, and 37b-38a.

11. T. XIII. 4 was unknown to Rabbah b. Huna, cf. Shab. 115b.

12. T. VIII. 33 was unknown to Rabin b. Hiyya, see Yer. Shab. VIII. 3.

13. T. VIII. 5 was unknown to Resh Lakish, see Shab. 68b.

14. T. I. 23a was unknown to Samuel, as appears from Shab. 108b.

|                   |                       |                            |
|-------------------|-----------------------|----------------------------|
| Ulla              | I. 4                  | Shabbat 6b                 |
| "                 | III. 13-14a           | " 44a                      |
| Yannai            | XVI. 1                | " 140a                     |
| Yannai, School of | VIII. 10a             | " 77b                      |
| Yohanan           | I. 4                  | " 7a                       |
| "                 | I. 7                  | " 11a                      |
| "                 | I. 8                  | Yer. Shabbat I. 3          |
| "                 | I. 9                  | Shabbat 147a               |
| "                 | II. 8c                | Keritot 20a, Y. Shab. II 5 |
| "                 | (III.) 6              | Y. Shabbat III. 1          |
| "                 | XI. 2                 | " 103a                     |
| "                 | III. 4a               | Shabbat 39b                |
| "                 | III. 13-14            | Y. Shabbat III. 7          |
| "                 | III. 15a              | Shabbat 45b                |
| "                 | III. 15b              | Y. Shabbat VI. 2           |
| "                 | IV. 8                 | " " VI. 2                  |
| "                 | IV. 9                 | " " VI. 2                  |
| "                 | VIII. 2c              | Shabbat 75a                |
| "                 | VIII. 3               | " 73a                      |
| "                 | VIII. 4 <sup>15</sup> | " 106a                     |
| "                 | VIII. 8               | Y. Shabbat VIII. 1         |
| "                 | VIII. 21              | " " VIII. 5                |
| "                 | VIII. 34              | Shabbat 94a                |
| "                 | IX. 12                | " 94b                      |
| "                 | X. 1d                 | " 6a                       |
| "                 | XII. 4                | Y. Shabbat XIV. 1          |
| "                 | XII. 13c              | Shabbat 109a               |
| "                 | XII. 14f              | " 125b                     |
| "                 | XII. 14g              | Y. Shabbat XII. 1          |
| "                 | XIII. 7b              | Shabbat 44a                |
| "                 | XIV. 3                | " 126a                     |
| "                 | XV. 4d                | Sh. 133b, Y. Sh. XIX. 6    |
| "                 | XV. 15 end            | Sanh. 74a                  |
| "                 | XVI. 7                | Gittin 56a                 |
| "                 | XVII. 11              | Shabbat 150a               |
| Zeiri             | I. 20-21              | Yer. Shabbat I. 5          |
| "                 | III. 9                | Yer. Bezah V. 1            |
| "                 | V. 7                  | Yer. Shabbat VI. 9         |
| "                 | XVI. 1b               | Shabbat 139b               |

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15. T. VIII. 5 was unknown to R. Yohanan, as appears from Shab. 68b.

## MISHNAH AND TOSEFTA OF SHABBAT

### CHAPTER I

The treatise of Shabbat may be divided into three parts: 1) ch. I-VI comprising regulations concerning Friday afternoon and evening, as well as four chapters linked together by the formula במח; 2) chapter VII-XVI containing mainly an enumeration and exposition of the thirty nine labors prohibited on the Sabbath; 3) chapter XVII-XXIV embracing mostly miscellaneous rabbinical enactments concerning the Sabbath.

To begin with chapter I, it is strange that the treatise should begin with the law concerning carrying which is actually the last of the 39 prohibited works. This difficulty was already felt by the Tosafot (to Shab. 2a s. v. יציאות) but they fail to give an acceptable solution. It seems that in an old Midrash to Exodus not now extant, the first halakic statement dealing with the Sabbath was the law forbidding carrying supposed to be implied in Exodus XVI, 29. This verse is actually the first occasion a definite work explicitly forbidden on the Sabbath is mentioned.<sup>1</sup> Verse 23 only indirectly forbids baking and cooking, while verse 62 merely says לא תלכטו, לא יהיה בו.

And even if it did prohibit plucking on the Sabbath, it was merely a temporary injunction in order to test Israel. It is worthy of note that Yer. Shab. I, 1 and Bezaḥ, 12a derive the law concerning carrying from Jer. XVII, 22 and do not attempt to trace it back to a Pentateuchal verse.<sup>2</sup>

The old Halakah simply read יציאות השבת שתיים שהן ארבעע, I 1, as it is found in Shebuot. The Amoraim have already noticed that in Shabbat the halakah is given in an expanded form. The an-

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1. Cf. Jahrbuch des traditionstreuen Rabbiner-Verbandes in der Slovakei, ed. M. Stern, 58-59; see also חרושי הלכות על שבת by R. Elijah Wilna, Vilna, 1926, p. 1.

2. Cf. Ginzberg, Eine Unbekannte Sekte, p. 268, note 1.



cient halakah יציאות השבת שתיים שהן ארבע intended merely to convey the fact that four different domains are to be considered in regard to the violation of the law of carrying on the Sabbath. The indistinct term יציאות<sup>3</sup> meaning domains was preferred to רשויות because the Tanna was thinking of Exodus XVI, 29 אל יצא איש ממקומו ביום השביעי. This old halakah accordingly was originally part of an ancient Tannaitic Midrash. In an earlier recension of the treatise of Shabbot, M. Toharot VI, 6-10 was inserted after the statement יציאות השבת שתיים שהן ארבע to elucidate the law concerning the four domains, as will be pointed out further on. Later when יציאות was understood to refer to the act of carrying the words בפנים and בחוץ were added.

Inasmuch as M. I, 3 discusses acts that are disallowed on late Friday afternoons,<sup>4</sup> M. I 2, which treats of acts interdicted on the afternoons of week days was introduced by mere association of ideas. Hence M. I, 3, properly speaking, begins the exposition of the laws of Sabbath with the Rabbinical injunctions to be observed shortly before twilight<sup>5</sup> as precautions against transgressing the Sabbath unintentionally.

M. I. 4 makes mention of the famous eighteen decrees enacted at a joint meeting of the schools of Shammai and Hillel at which the school of the latter was outnumbered by the former. In the Mishnah neither what precedes or follows this paragraph seems to indicate why this statement was inserted at this juncture. However, a glance at the Tosefta will make it clear that Rabbi abbreviated his texts considerably and thus the original smooth transition was lost. Thus T. I, 15 discusses a difference of opinion between the school of Hillel and Shammai in regard to a זב This lead the compiler to add the remark concerning the eighteen

3. Cf. the statement of Raba in Shab. 2b רשויות קטני רשויות שבת שתיים. Similarly, the Tosefta, which begins with the statement ארבע רשויות לשבת assumes that יציאות means רשויות. Cf. Blau, M. G. W. J., 1934, p. 122.

4. It may be remarked that in connection with other festivals too, the Mishnah deals first with the laws concerning the preparations for the holiday proper, as e. g. Shebiit, Pesahim, and Yoma.

5. In regard to twilight there are several terms. The oldest seems to be עם שמש (Shab. I 8) which is formed after Ps. 72, 5 A later phrase is עם חשכה, Shab. I. 10, and finally the completely Rabbinic term in Shab. I. 3, סמוך לחשכה. Cf. also the phrase בין השמשות.

measures promulgated by the school of Shammai over the protest of their opponents (T. I, 16). Of these enactments only two are recorded in the Tosefta (I 18-19). The correct reading of M. I. 4 is *ואלו מהלכות* as the T. has it and is to be translated: the following are some of the halakot enacted. In our Mishnah not only the historical reference to the eighteen enactments, but the previous conflict of opinion between Bet Hillel and Bet Shammai were omitted, as well as the subsequent mention of some of these halakot. This abridgment on the part of the compiler of the Mishnah obscured the relation of M. I, 4 to its context and gave rise to a misunderstanding of the text and to the incorrect reading *ואלו מהלכות*, which was known to some Amoraim.<sup>6</sup>

M. I, 5-8 notes five instances in which B. H. and B. Sh. are in controversy over the law relating to the commencement of work on Friday afternoon that will continue automatically<sup>7</sup> on the Sabbath. B. Sh. reflecting the attitude of the well-to-do classes<sup>8</sup> prohibited it, whereas B. H. took a more liberal view in regard to this matter, inasmuch as this law would involve great hardship upon the poorer class whom they represented. The Scriptural proof adduced in T. I, 21, Yer. Shab. I, 5, and Mek. di R. Shimon, p. 108 is a later lucubration.<sup>9</sup>

In two instances, however, Bet Shammai permitted one to begin work which would go on of itself on the Sabbath, namely the placing of boards on an oil and wine press,<sup>10</sup> whereas even B. H. prohibited one from roasting or baking late Friday, unless the food would be ready before the Sabbath set in. An exception was made in the case of the Paschal lamb. (M. I, 9)

6. Shab. 13 b.

7. Shab. 19 b. *מידי דאתי ממילא*.

8. Cf. Ginzberg, *מקומה של ההלכה בחכמת ישראל*.

9. M. I. 9a, which reports the view of R. Shimon b. Gamliel, is a later addition. Cf. also R. E. J, 44:175.

10. According to Mekilta di R. Shimon 108, even this work was only allowed by the B. H. Perhaps our M. represents the opinion of R. Ishmael who entertained the lenient view in regard to this matter, as is seen in M. Eduyot II, 6, whereas R. Akiba's more rigorous notion is preserved in the Mekilta, cf. Ginzberg to Rashkes' ed. of the *ראב"ן* Jerusalem, 1915, p. 27c.

## TOSEFTA

Chapter I of the Tosefta corresponds to Mishnah, Chapter I, and follows the same order that the Mishnah has in its discussion of the halakah. Like the Mishnah, the Tosefta too is derived from various sources. This point is well illustrated in some of the paragraphs of the present chapter. Thus Tosefta I, 1-6, which comment upon and supplement M. I. 1 do not form a unit, but emanate from different sources. Par. 1-3 elucidate the ancient halakah יציאת השבת שהן ארבע whereas Par. 4-5a allude to a tannaitic statement not now in the treatise of Shabbat and Par. 5b-6 explain M. I. 1b.

That Par. 4-5b are not a continuation of Par. 1-3, but hail from some other source, may be proven as follows. First, it does not begin with the interrogative *היא איזה*, as do par. 1-2; secondly, the meaning of the term *כרמלית* is different from that in Par. 1. In the latter *כרמלית* is a generic term similar to *רשות היחיד* and *רשות הרבים*, whereas in Par. 4 *כרמלית* has a specific meaning as is evident from the fact that Par. 4 does not read *הכרמלית והבקעה וכו*. The Babli felt this difficulty as is indicated in the query *אטו כוליהו נמיהו*. Similarly, the Yer. (I.1) did not consider *כרמלית* in Par. 4 a generic term embracing *ים* and *בקעה* for we read there *איוו היא כרמלית ר' יוסא בשם ר' יוחנן כגון חנותיה דבר יוסטני* and *1. c. חייא בריה דרב כל המעכב דריסה בר"ה נידונין ככרמלית*.

Thirdly, Par. 5 of I *אסורים לא ערבו רבים של חצר* is out of place and has nothing to do with our M. This fact was sensed by Rashi, Babli, 6a s. v. *לא ערבו* where he says *רשויות ר' מחילוק ר' רשויות*. היא.

In view of these facts it may be conjectured that Par. 4-5a comment upon a series of Mishnaic statements in Toh. VI, 6-10 which were originally in an earlier redaction of Shabbat. There we read (M. 6) *שבילי בית גלגול וכן כיוצא בהן רה"י לשבת ורה"י לטומאה* (M. 10) *הבקעה . . . רה"י לשבת ורה"י לטומאה* (M. 7) *האסטונית . . . רה"י לשבת ורה"י לטומאה חצר . . . רה"י לשבת*. In the Tosefta we find three of these discussed in the

11. In Par. 4 the phrase *לא כרה"י ולא כרה"י* is the equivalent to *כרמלית* of Par. 1. Incidentally it may be remarked that *כרמלית* is rarely used in Tannaitic sources; cf. M. Erubin IX. 2. T. B. K. 16.

same order, namely (1) **בקעה** (2) **אסמונית** (3) **הצר**. It now becomes clear why **הצר** is mentioned in the T. i. e. as a supplementary remark to **הצר** mentioned in the Mishnah. The reasons for the assumption that Toh. VI, 6-10 was originally in the treatise of Shab. are twofold. First, as to the wording of the M. in a treatise on **טומאה**, it is strange to find the statement **שבילי בית גלגול וכן כיוצא בהן רה"י לשבת ורה"ר לטומאה**. We would expect the law concerning impurity to be mentioned first. The only explanation is that the compiler of the M. in transferring the M. from Shab. to Toh.<sup>12</sup> did not alter the original phraseology, and thereby revealed the original place of Toh. VI, 6-10. Secondly, in view of **יריעות הטומאה שמים שהן ארבע יציאות השבת שמים שהן ארבע** which might have been in Shab., it ought not to seem strange to find some laws concerning **טומאה** in Shab.<sup>14</sup> Par. 5b-6 belong to a source later than Par. 1-3 or 4-5a, since it presupposes M. I, 1b which speaks of **בעל הבית** and which is later than Mishnah 1a.

T. I, 7 comments upon M. I, 2, which states that we interrupt our work in order to read the Shema, but not the Tefilla. In regard to this point it seems that the practice has been modified several times, as may be inferred from T. Berakot II, 6. At first it was customary for scholars engaged in matters of great religious importance not to discontinue these duties even to read the Shema.<sup>15</sup> R. Eleazar b. R. Zadok reports that when the sages were busy with the intercalation of the calendar, they did not pause to recite the Shema.<sup>16</sup> At a later period it became the fashion for scholars<sup>17</sup>

12. **אסמופה** is not found in the parallel abaraita in the Babli, and should be deleted from the T.

13. These passages, of course, belong in both treatises since they touch upon a point common to both.

14. It should be noted that Par. 4 is in contradiction to M. Toharot VI, 7 and 10. While **בקעה** and **אסמונית** are considered in the T. as **כרמית** = **לא כרה"ר ולא כרה"י** in the M. these two are put in the category of **רשות היחיד**. The attempt on the part of the Babli (6b) and Yer. I. 1 to harmonize this discrepancy is forced.

15. i. e. the entire Shema; however, all agreed that the verse "Hear, O Israel" had to be read in any event, as it was Biblically ordained' cf. Berakot 13b, where it is stated that R. Judah ha-Nasi would only read this verse.

16. Shab. 11a.

17. According to T. Ber. II. 6 (cf. Sukkah 26a), scribes who wrote scrolls, phylacteries and mezuzot were not required to cease their work in order to read the Shema. It is not quite clear just why

to suspend their learned discussions in order to read the Shema, but not the Amidah.<sup>18</sup> According to the view of R. Yohanan, as expressed in the Babli, the latter practice obtained in the time of R. Shimon b. Yohai<sup>19</sup> and is the one that is recorded in the Mishnah. However, the latest custom in regard to this matter as transmitted by R. Hananiah b. Akabiah<sup>20</sup> was to stop in the midst of one's work in order to read both the Shema and the Amidah. This was the prevalent practice in the time of the Amoraim, as may be gathered from R. Yohanan's statement.<sup>21</sup>

T. I, 8 enumerates five<sup>22</sup> kinds of artisans that may not walk shortly before dark on Friday with their tools. The old halakah merely contained the regulation concerning the five workmen, from which the redactor of the Mishnah excerpted the statement concerning the tailor and scribe. The controversy between R. Meir and R. Judah as to the penalty one is liable to for acting contrary to the old ruling, is of later origin.

T. I, 9-10 seems to have been derived from another source than T. 8, inasmuch as the latter begins **לֹא יֵצֵא הַחַיִּים**, whereas the former reads **הַסּוֹחֵר בְּסוֹם לֹא יֵצֵא**. T. 9-10 are brought in here in contrast to T. 8 which reads **וְאֵם יֵצֵאוּ כֹּלֵן פְּטוּרִין** whereas T. 9-10 says **וְאֵם יֵצֵא חֲרִי זֶה חַיִּים**. Noteworthy is the fact that the parallel baraita in Shab. 147a deals with carrying on the Sabbath proper and not on the eve of the Sabbath as T. 9 does.

T. 11-13 comment upon the statement in M. 3, forbidding one to read on Friday evening before candle light. It should be noted that whereas the M. uses the future tense **לֹא יִקְרָא** the T.

exception was made in regard to this class of craftsmen. Cf. the interesting interpretation in Shulhan Aruk, Orah Hayyim 38, 8.

18. Shab. 1. c.

19. Cf. Tosafot Shab. 11a s. v. **כָּנוּן** who call attention to the difficulty in accepting this statement. According to Yer. Shab. I 2, R. Yohanan held that the earliest practice not to pause even to read the Shema prevailed in the time of R. Shimon b. Yohai.

20. T. Ber. II. 6, Yer. Shab. 1.2., this view is given anonymously in Shab. 11a. In Sukkah 26a, the opposite view is ascribed to R. Hananiah. Perhaps the statement attributed to him here was his earlier opinion, which he subsequently discarded, as Frankel first suggested; cf. Schwartz, Tosefta Zeraim, p. 12, note 32.

21. Shab. 11a, Yer. 1. 2.

22. Concerning five as a round number in Rabbinic sources cf. Kittel, Rabbinica, Leipzig 1920, p. 35-47.

employs the present tense אין קורין. From the T. we learn that this interdiction is as old as the time of R. Ishmael, who quotes the old halakah אין קורין לילי שבת לאור הנר.

T. 14-15 comment upon M. 3 ביוצא בו לא יאכל. It is interesting that R. Shimon b. Elazar refers to this halakah as being instituted by the ראשונים, i. e., the schools of Hillel and Shammai.<sup>23</sup> His statement is corroborated by the fact that the Beth Hillel and Beth Shammai differ over the question whether a זב פרוש may eat with a זב עם הארץ.<sup>24</sup>

T. 16-19 contains a part of the older halakah from which one paragraph T. 16 was literally incorporated into our Mishnah.<sup>25</sup>

T. 20-21 presuppose M. 5 and present the arguments of both schools in regard to their controversy over the point mentioned in the M.

T. 22a repeats M. 7 literally and adds a definition of the ambiguous phrase מקום קרוב. In M. XXIII, 4, where this phrase is also found, it is used to denote a distance less than a Sabbath day's journey. In the T. it is interpreted to mean the first house near the city wall or limits.

Furthermore, the statement in the M. that the Beth Hillel permits it is vague, as it does not indicate how late they would permit one to sell to a Gentile on Friday afternoon. In the T. the view of B. H. is not elucidated beyond that which is found in the M., but the view of R. Akiba is added, namely, that one may sell to Gentiles late on Friday afternoon, provided there is sufficient time for the Gentile to leave the Jew's house before the Sabbath sets in. In the Babli, 8b, R. Yose states that this view of R. Akiba is actually that of B. H., whereas in Yer., I 8, it is a compromise view שבא להכריע על דברי ב"ה.

En passant, it may be remarked that the baraita in Babli 18b, presupposes a different view as to the controversy between B. Sh. and B. H. According to it, B. Sh. held עד שיגיע לביתו, whereas it was B. H. who required עד שיגיע למקום קרוב. It is true that

23. Similarly R. Judah refers to the B. Sh. as ראשונים Git. 81a. Cf. Zewi Karl, Pesachim, p. 110.

24. Cf. the remarks of R. Elijah of Wilna שכתב אליהו, p. 23-4.

25. Cf. above p. 67-68.

the baraita actually reads *עד שיגיע לבית הסמוך לחומה*, but this is merely the interpretation of the older halakah, as is evident from the T.

The statement of R. Yose in the baraita in Babli 18b, originally formed a comment upon the Tosefta, and is out of place in its present context in the baraita. If we assume that R. Yose's statement belongs to this baraita, it is difficult to understand his view according to which R. Akiba's opinion *כדי שיצא מפתח ביתו* is identical with that of B. H. *לחומה הסמוך לבית*.<sup>26</sup> However, if we suppose R. Yose's statement to refer to the T. where B. H. merely says *מתירין* and R. Akiba *כדי שיצא מפתח ביתו*, it is quite logical to assume R. Akiba's statement to be an interpretation (*לא בא ר' עקיבא אלא לפרש*) of B. H.'s general statement. Our conjecture seems to be further supported by a statement of R. Yohanan in Yer. I, 8, who, after quoting literally R. Akiba's view from our T., remarks *זו דברי ר' יוסי*. Hence we may conclude that the controversy between B. Sh. and B. H., as presented in the M. and the T., is taken from R. Yose's Tannaitic collection, whereas the views of the two schools as transmitted in the baraita emanate from a different source.

T. 22b, referring to M. 9a, transmits a statement of R. Elazar b. Zadok who records the customs in the house of the Patriarch with some further details not mentioned in the M. In Babli 12a, the reading is R. Zadok, but it seems that the T. is correct, inasmuch as it is R. Elazar b. Zadok who is acquainted with the customs in the house of R. Gamaliel, cf. Bez. 15b, and T. II 13, 14.

T. 23, like 9b, 10, first states which works may be commenced on Friday that will continue automatically on the Sabbath, and secondly those prohibited are enumerated. Cf. also Mek. di R. Shimon, p. 108, the word *פותר=פותר*, for the interchange, cf. Wright, Comparative Grammar, p. 48.

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26. Rashi s. v. *הן הן* already felt the difficulty, but his interpretation of the baraita is forced.

## CHAPTER II

Ch. II of the M. deals with the regulations concerning the kindling of the lights on Friday evening. This ceremony was observed before 70 C. E., for Nahum, the Mede, who flourished before the destruction of the Temple, discusses it.<sup>1</sup> Evening meals were usually taken when it got dark, cf. (Berakot 2b); hence it was necessary to kindle lights for the meal. On Friday evening, too, it was customary to eat supper after dark, but the lights had to be kindled shortly before twilight<sup>2</sup> עַם חֲשִׁיכָה (M. II, 7 and T. Ter. X, 9) and the ceremony assumed a special religious significance. Hence, the kindling of the lights became the ceremony which ushered in the Sabbath. M. I enumerates first the kind of wicks, and then the sort of oils including שֶׁמֶן שֶׂרָפָה that may not be used for kindling the Sabbath lamp. M. 2a, which states that שֶׁמֶן שֶׂרָפָה may not be burnt even on a festival seems to be a short digression, but from T. II, 1, which says "all the oils which are prohibited to be used on Friday eve may be employed on festivals, except שֶׁמֶן שֶׂרָפָה it is clear that the reference to שֶׁמֶן שֶׂרָפָה in our Mishnah was an integral part of the discussion. The Mishnah by excerpting part of the fuller halakah preserved in the Tosefta, effaced the smoother transition in the older arrangement.

Incidentally, it may be explained why שֶׁמֶן שֶׂרָפָה may not be used for kindling the Sabbath lights. As pointed out above, this ceremony was invested with a sacred and solemn character,

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1. Seneca (d. 65 C. E.) also alludes to its observance, cf. Reinach, *Textes d'Auteurs Grecs et Romains*, p. 264. Schuerer II 532, note 5 Friedmann, J. Q. R. III, 707-22.

2. According to the baraita in Babli 35b, the kindling of Sabbath lights should take place at an interval before dark, which would allow one to roast a small fish, or to put a loaf of bread into the oven so that its crust may form. According to R. Yose it was permitted to light the candles even after the blowing of six blasts of the Shofar on late Friday afternoon.



and the neglect of its observance was supposed to bring in its train divine retribution (M. II, 6). Hence, it was required that the individual be conscious of the fact that he is performing a religious duty. Since שמן שרפה could not be used for any other purpose than kindling,<sup>3</sup> one would be inclined to feel by employing it for the lighting of the Sabbath lights, one was just disposing of it in the most useful manner. Therefore, we read in T. Terumot X, 9, (Yer. end). A daughter of a priest who had a lamp filled with שמן שרפה shortly before dusk on Friday should put in some oil of Holin and then may light it. Similarly, it was forbidden to burn שמן שרפה on the festivals, for Scripture only permitted kindling lights on holidays in connection with the preparation of food, as Raba remarked (Shab. 24b). M. 2b presents three views as to the sort of oils that may be used for kindling of Sabbath lights. It is strange that in the M. fish oil is mentioned between radish and gourd oil. It would have been more logical to have mentioned radish and gourd oil together, since they are both derived from species of vegetables, and then fish oil should follow.<sup>4</sup> However, the text of this Mishnah passage is due to the fact that the view of the sages is a combination of the opinions of R. Yohanan b. Nuri, R. Shimon, and R. Shimon Shezuri, as they are preserved in a baraita in Babli 26a, and hence the somewhat illogical enumeration of the oils in the M. is accounted for.

R. Tarfon's view that only olive oil may be used is given in the M. after that of the sages, whereas in the T. it precedes it. The sequence in the latter is the original one, otherwise R. Yohanan b. Nuri could not state his objections to it. R. Tarfon's insistence that only olive oil be used is explained in the Midrash<sup>5</sup> as due to the fact that he wished to imitate the Scriptural injunction in regard to the perpetual lamp, although the lighting of the Sabbath lamp was merely a ceremony of Rabbinic origin.<sup>6</sup> Perhaps the fact

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3. M. Temurah VII. 5, cf. Pesachim 33b, cf. commentary of R. Elijah, Wilna ad loc.

4. As a matter of fact, this is the sequence in T. Shab. II, 3-4.

5. Tanhuma, ed. Buber IV. 45; Ginzberg, Ginze Schechter I, 476-7.

6. Cf. the baraita cited by Rami b. Hama (Shab. 21b), where it is stated that the regulations concerning the kindling of the Sabbath lamp apply equally to the lighting of the perpetual lamp. One would expect the opposite analogy, as the laws concerning the former are Rabbinic, whereas those concerning the latter are Biblical.

that R. Tarfon was a man of means,<sup>7</sup> inclined him to advocate a practice which could be afforded by people of wealth.

M. 3a, which discusses the kind of wick that may be used, should have been part of M. I where this point was taken up. However, the reason why this halakah (כל היוצא מן העץ) has been inserted at this juncture is that it presupposes T. II, 4 כל היוצא מן הבשר.

M. 3c states the controversy between R. Eliezer and R. Akiba concerning the use of an improvised wick. This paragraph was originally part of Kelim, for the halakah first asserts the law concerning impurity and then that about the Sabbath. We would expect the reverse, if this statement was originally found in the treatise of Sabbath. In T. II 4, the anonymous view follows the opinion of R. Eliezer and not R. Akiba on this point.<sup>8</sup>

M. 4 prohibits certain methods of keeping the lamp supplied with oil on the Sabbath. M. 5 permits one to extinguish lights in cases of emergency.<sup>9</sup> Similar laws are discussed in M. XVI, 5-7. M. 4-5 do not discuss the laws of kindling the Sabbath lights, and in fact are a digression.

M. 6 contains an Agadic statement alluding to the punishment of three sins of omission,<sup>10</sup> including the disregard of the ceremony of kindling the Sabbath light, whereas M. 7 mentions three acts including the lighting of the lamps, which must be performed shortly before the advent of the Sabbath. From the T. it is plain that M. 7 preceded M. 6, and hence Ch. II originally concluded with an Agadic observation. The statement T. II, 10 היו שלשתן ליעשות, which is at the end of the chapter, would not impugn our assumption, as it is manifestly a later gloss.

7. Nid. 62b.

8. This would contradict the statement attributed to R. Yohanan, that the anonymous views of the Tosefta ultimately go back to R. Akiba.

9. For the peculiar syntactical form כחם על הנר cf. T. Demai-I 1, and T. Erubin XI, 21 (p. 154), Yer. X, 13.

10. Yalkut Leviticus 571.

## TOSEFTA

T. II contains subject matter parallel to M. II. T 1-2 supplements M. 1; for T. 2 cf. T. Shebiit VI, 14-15, which discusses the laws concerning the use of oil of Shebiit for illuminating and heating purposes, as here.

T. 3-4a contains the older formulation of the halakah which is abridged and modified in the M. However, as pointed out above, the M. is based on the text of the parallel baraita in Babli 26a, rather than on the 'T.

T. 8b מעלין בריויפי is brought in because of M. 5, which permits one to extinguish a light for the benefit of a sick person. For this T. passage cf. J. E. VI, 464-465.

T. 8c החותה נחלים puzzled the Amoraim who offered various interpretations of this passage, cf. Keritot, 20a, Yer. Shabbat II, 5. It has nothing to do with intention as they thought. However, to understand this text aright, a short digression is necessary. As is well known, the Bible explicitly forbids cooking, as well as baking on the Sabbath, and undoubtedly in the old list of prohibited works both were mentioned.<sup>11</sup> However, in the enumeration of the thirty-nine works in M. VII, 2 only baking is included. The omission of cooking is not to be explained on the ground that it is implied in baking, for then, why does the Mishnah make special note of מרקר, טוחן, בורר, which are practically the same, as was noted by the Amoraim. The prohibition of cooking is included in the statement מבעיר ומכבה for the process of cooking sometimes involves not only kindling fire, but also decreasing it or entirely extinguishing it. The correct reading of the Tosefta is החותה נחלים מתחת הקדירה as we find it in the parallel baraita in the Yerushalmi (cf. also, M. Toharot VII, 9). Hence the Tanna Kamma held that he who removes coals from under a pot is liable for one sin-offering, because he has transgressed the law forbidding cooking, for this act was done for culinary purposes, thus presupposing the explicit reference to מבשל in the enumeration of the prohibited labors. R. Elazar b. R. Zadok was acquainted with the halakah which did not mention מבשל explicitly, but prohibited it as מבעיר. Hence, when for the purpose of cooking, one performed

11. Cf. M. Terumot II. 3, Shabbat 74b.

an act which involved both kindling and extinguishing, such as *החזתה נחלים* R. Elazar held that the transgressor was liable for two sins. This interpretation is borne out by the Yer. (Shab. II,5) which reads: He who kindles a fire and cooks on it, according to one view, is liable for two sin-offerings, one for kindling a fire, the second for cooking.<sup>12</sup> According to another view, he is liable only for one sin-offering. Concerning this latter point, there is also a controversy. R. Judah said he is liable for the act of kindling, whereas R. Yose said he is responsible only for the act of cooking.

It is quite clear that there is an essential difference here concerning the definition of the act of cooking. According to the Tanna, who held that he was liable for two sin-offerings, cooking strictly speaking is considered as the subjection of food to the action of heat, and hence the ignition of fire is an additional act. According to the authorities who charged one with the liability for one sin-offering, it is quite clear that here cooking in the larger sense, is meant which includes the act of kindling.

R. Yose held that *הבערה ללאו יצאת*, (Shab. 70a), i. e., kindling a fire on the Sabbath, was not one of the thirty-nine works, which involved the punishment of stoning if performed intentionally, but merely entailed a violation of an ordinary Biblical prohibition, hence, if one kindled a fire and cooked over it, he is liable only for cooking. (*מבשל*)

R. Judah was of the opinion that originally cooking, in the larger sense, only was prohibited, i.e., the kindling of a fire, and cooking over it. These two acts were considered as one, and cooking was forbidden because it involved the necessity of kindling fire. Later on, when cooking, in the narrower sense, was forbidden, *מבשל* or *אופה* was included in the list of prohibited works.

T. 9 refers to the immersion of impure vessels in water at twilight, mentioned in M. 7. The older halakah<sup>13</sup> did not make any distinction between various vessels, as does the Tosefta in reference to this point, which transmits the younger halakah. It is interesting to note that whereas in this particular passage the

12. Cf. Makkot 21b.

13. As preserved in M. 7 and the bar. Bezah 19a, cf. also M. Terumot II. 3, and Tosafot Hagigah, 21a s. v. *מאונן*

M. speaks of twilight as *ספק חשכה ספק אינה חשכה*, the Tosefta employs the better known phrase, *בין השמשות*.<sup>14</sup>

In T. 10b the statement of R. Sh. b. G. is introduced here because T. 10a speaks of *מסורין לנשים*, whereas it contains the phrase *ונמסרו לעמי הארץ*, although in the latter it has an entirely different meaning. Curious, too, is the use of the word *הלכות*, for it is not the laws of Terumot, etc., but the observance of these laws that the Ame ha-Aretz are entrusted with. However, the word *הלכות* seems to be a reminiscence of Hagigah I, 8<sup>15</sup>.

T. 10c, which states that when the three preparations for the Sabbath are to be performed, they are to be done in the order given, is undoubtedly out of place here, and represents a later addition.<sup>16</sup>

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14. On twilight in Jewish ritual, cf. Bornstein in Ha-Asif, ed. Sokolow I, Section 2, p. 267-275; Lerner, Festschrift Carlebach, 130-15. Tykocinski, *ספר בין השמשות*, Jerusalem, 1929, and Abraham Pimentel *מנחת כהן*, Lemberg, 1841.

15. Cf. also Tosefta Erubin end, Abot III, 18, and Bacher, *Die exegetische Terminologie I*, 11-12.

16. Cf. Zeitlin, *Proceedings of the American Academy for Jewish Research*, IV, 223.

## CHAPTER III

Ch. III originally followed Ch. I, as may be inferred from the following observations. Ch. III, 1-2 is in a sense a continuation of M. I, 10, which deals with the question of putting food on the stove shortly before sunset. Ch. III interrupts Ch. II, IV, V, VI, which begin with the word **במה**. The last phrase of Ch. II **ומומנין את החמין** would seem to require that Ch. IV, which begins with the words **במה מומנין** to have followed immediately.<sup>1</sup>

Why did the compiler change the order of the chapters and insert Ch. **כירה** after **במה מדליקין**? It seems that the redactor preferred the sequence observed by an old Mishnah originally in Shabbat, but now preserved in M. Terumot II, 3<sup>2</sup> which contains Sabbath regulations belonging here, in the following order: (1) **הנומץ** (4) **המבשל** (3) **המעשר** (2) **המטביל כלים בשבת** (1). For some reason which cannot be discovered, the compiler has transferred this passage to M. Terumot, but took up the discussion of the first three points in the very order in which they were dealt with in the old halakah. Thus, M. II, 7 treats of (1) **אין מטבילין את הכלים** (2) **אין מעשרין את הדמאי** (3) **כירה** = laws of **בשול**.

Of Ch. III only M. 1-2 and 6b **וואם נתנו מבעוד יום מותר** deals with the regulations concerning Friday evening shortly before twilight.

It seems that M. 3-6, which discuss regulations concerning the Sabbath day proper, are derived from a different source. In M. III, 1, the presentation of the controversy between B. Sh. and B.H. is the version transmitted by R. Judah, as we learn from T. (III) 3, where R. Meir's view is also given. The statement in the M.

1. See also Mek., ed. Friedmann, p. 105a; Mek. di R. Shimon, p. 166, but cf. Shab. 35b, Tosef. Sukkah, IV 12. See Rosenthal, *Zusammenhang der Mischnah I*, 1918, p. 127.

2. That this M. was originally in Shabbot is evident from Tosefta Shab. (III), 4-11.

בש"א חמין אבל לא מבשיל forms an incomplete sentence, for some verb is missing, as the Amoraim had correctly felt (Shab. 36b-37a). The compact wording of the M. is due to the fact that it is an excerpt from the baraita in Babli 37a = T. III, 3, where both R. Meir and R. Judah's opinions are set down. In the baraita the phrase מה הן משהין is mentioned only before R. Meir's view, which is cited first, but is not repeated in connection with R. Judah's statement because it is understood. The compiler of our Mishnah incorporated only R. Judah's view, omitting not only R. Meir's view, but the introductory phrase מה הן משהין, to which both R. Meir and R. Judah's remarks refer, thus leaving the passage somewhat ambiguous.

M. III, 3 prohibits the cooking of an egg on the Sabbath by subjecting it to heat through no fire is present. It is not quite clear why this paragraph is brought in at this juncture.

M. III, 4 discusses the custom of the Tiberians who conducted a pipe from hot springs into cold water in order to warm it. It is contrary to the wont of the M. to cite an actual case without having previously stated the law bearing upon it.<sup>3</sup> In the M. actual cases introduced by the formula מעשה are found about eighty times, and in all instances but two, the legal principle is first stated, and then is followed by an actual case illustrating the point in question. Thus, this passage and that in M. Bekorot VI, 9<sup>4</sup> seem to be exceptions to the rule. The observation in regard to the latter passage was made by the Amoraim who raised the question מאי תנא דקתני ומעשה (Bekorot 40a). It is not very likely that the case in Bekorot was brought in because of the previous statement, as the Amoraim believed, (משום דתנן פיו דומה לחזיר). In this particular instance it seems to be clear that the M. presupposes the statement in T. Bekorot IV, 12 שפתו התחתונה עורפת על העליונה. Similarly, M. Shabbat III 4 connects with T. III 3, מרחץ שחתמו נקבים מערב שבת.

Since M. 4 mentions the law concerning drinking liquids warmed in the Sabbath, M. 5 continues the discussion. M. 6 contains three

3. In the Tosefta, cases are often cited without a previous statement of the halakah. Cf. T. Ber. I 4; IV, 16; V 2 and elsewhere but then these passages introduced by מעשה actually refer to the M.

4. מעשה שהלחי התחתון עורף על העליון.

laws concerning the lamp: (1) the prohibition of using its oil on the Sabbath since it was not available before the Sabbath *לפי שאינו מן המוכן* (2) the handling of the lamp on the Sabbath,<sup>4a</sup> (3) the prohibition of putting a dish with water under a lamp to receive the sparks. Since there is no logical connection between these statements and the previous paragraph, it is natural to assume that M. 6a, beginning with the words *אין נותנין כלי תחת הנר* was meant to follow T. III, 9b, 10, 11, where the similar phrase *מביא כלי ונותן תחתיה* is employed.

As for the sequence of M. 6, both T. III, 13-14, which is derived from one source, and 15-18, which is taken from a different compilation, imply the following order, 6b, 6a, which seems to be the more original one.

### TOSEFTA

T. (III) - III. 1-18, which corresponds to M. III, are extracted from different collections. Thus, T. (III) 1-3, 5a, *המבשל בשבת*, 11a, 12; III 3-5a, 7b from *ממלא אדם* to 14, form one layer. The rest of these passages, while they do not betray signs of a uniform origin, belong to a later source. T. (III) 5b-7 which speaks of *מוצאי שבת* and III 1-2 *עדי שיעשו*, undoubtedly emanate from one source. T. III, 5b-7 are later interpolations, as they interrupt the passages beginning with the phrase *ממלא אדם* T. 15-18 represents a second comment upon M. 6. This seems to be the structure of this chapter of the Tosefta.

To return to the individual passages of the T., it is important to note that the phrase *מקיימין*, which is used in T. (III), 1, 3, is employed by R. Hiyya in a parallel baraita in Babli 37a, whereas R. Hoshaya l.c. uses the synonym *משהין*, which is also found in the parallel texts in the Yerushalmi. This would seem to imply that this passage of the T. and the parallel baraita of R. Hiyya are derived from a common source, whereas the anonymous baraitot using the verb *משהין*, are taken from the same source as R. Hoshayah's text.

4a. In the M. it is not quite clear why *מטלטלין* was brought in. However, in the T. III 9b, we read *חבית של טבל שגשברה מביא כלי ונותן תחתיה נתמלא אסור לטלטלו*.



T. (III) 4 reads: If one forgets a pot on the stove Friday afternoon and it got dark, if it happened unintentionally, its contents may be eaten; if intentionally, it may not be eaten. This seems to be a contradiction in terms, for how can one forget intentionally. However, the original text of the Tosefta is actually preserved in Yerushalmi III 1, of which the present text is an abridgment. There we read בראשונה היו אומרים השוכה תבשיל ע"ג כירה וקדשה עליו את השבת (שוגג) יאכל (מוזיר לא יאכל) נחשרו להיות מניחים מזידים ואמרו שכיחין היינו אסרו להן את השוכה. In the baraita the words put in parenthesis were originally omitted. The text then had two statements: first, it permitted food to be eaten that was left out of forgetfulness on a stove shortly before dark on Friday,<sup>5</sup> but later on, when it became a frequent occurrence for people to leave pots, intentionally, on the stove before dark and pretend that it was done unwittingly, the sages forbade that food to be eaten on the Sabbath. The compiler of the T. paraphrased the second statement נחשרו להיות מוזירין by the words מזיר לא יאכל, and added the word שוגג to the first statement in order to make clearer the contrast with the second statement. While the words which we have inserted in parenthesis are actually found in all editions of the Yerushalmi, there can be no doubt that they do not form part of the original text, but were added by a copyist from the Tosefta.

As was indicated above, M. Terumot II, 3<sup>6</sup> was originally found in Shabbat at the beginning of Chapter III, and traces of its presence are preserved in T. (III) 5a, and 11.

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5. This is also implied in the statement of Rab in Babli 38a. בתחילה היו אומרים המבשל בשוגג יאכל במזיד לא יאכל והוא הדין לשוכה. Hence, שוכה is treated as שוגג in שבת בשוגג.

6. That M. Ter. II, 3 was not originally in Terumot is obvious for a number of reasons. First, it differs in style from the rest of the chapter, which begins with the phrase אין תורמין or תורמין. Secondly, this M. mentions first the case of immersing vessels on the Sabbath, and then the case of tithing. (It is rather surprising that the mention of setting aside the heave-offering is omitted.) In this treatise we would expect the reverse order. Thirdly, the principle involved in M. 3 is different from that underlying M. 2. In the latter, the question is whether heave-offering or tithes set aside not strictly according to regulation is valid or not, whereas in M. 3 the point is whether one may use food which has been tithed on the Sabbath. Hence, M. 3 is a later insertion in this chapter. On the other hand, T. Terumot IV 1, which corresponds to M. 3, originally formed part of M. III as is evident for the following reasons: First, it begins with

In T. (III) 5, the old halakah merely read **המבשל בשבת בשוגג** **יאכל במזיד לא יאכל**.<sup>7</sup> The fact that the T. attributes this view to R. Meir doesn't mean that this is R. Meir's original view, but rather that he transmitted the old halakah in his Mishnah without comment. However, R. Judah and R. Yohanan ha-Sandlar dispute the meaning of this halakah, which is ambiguous and capable of various interpretations. Both of these scholars in their stringent interpretation of the law represent the later tendency to be strict in regard to the laws of the Sabbath. Similarly, T. (III) 7-8, III, 1-2<sup>8</sup> presuppose the later ruling. T. (III), 9-10 are quoted from T. Ter. IV, 1.

T. III, 3 deals with the law of bathing, which is also touched upon in M. XXII, 5. It is introduced into the discussion here because this case treats of a bath-house whose apertures have been closed on Friday before dusk.

T. 5a, 7b, 8 contain five statements which begin with the phrase **ממלא אדם**.

T. 5b-7a are later additions inserted in the midst of the previous passage, for T. 5b contains the common phrase **כנגד המדורה** T. 6-7a has three statements concerning **מעים**.<sup>9</sup>

**התורה** and is thus in keeping with the style of the whole chapter; secondly, it deals with the case of *terumah*, with which this treatise is primarily concerned, and thirdly, the principle is the same as that which is involved in M. 2. It is difficult to give a satisfactory explanation why the compiler of the M. did not insert T. Terumot IV. 1 into the M. and preferred to incorporate M. 3, which is actually a supplementary statement to T. Ter. IV, 1. En passant, it may be remarked that the second statement in the latter is from a different source, since it uses the phrase **עלו ידי מבילה** instead of **טבילתם מבילה**, which would preserve the parallelism with the first **מעשרות מעשרות**.

7. Cf. Halevy, *Dorot ha-Rishonim* Ie, p. 875. This is implied in M. Ter. II, 3.

8. T. III 1-2 should have preceded T. (III) 12, but it is actually found before T. III. 3, because of the common phrase **ערב שבת**.

9. The Vienna MS. reads **משמשין**. The scribe probably had in mind M. XXII, 6 **סכין ומשמשין**, but the reading **מושחין** is correct. Cf. also Yer. Shab. VI, 2; **משח** is here used as an equivalent to **סך**. Krauss, *Archaeologie* I, p. 686, note 235. Vereinzelt **משך** in Sinne von **סך** T. Ter. X, 10" is accordingly to be corrected.

T. 9b-14 form a unit and are derived from one source, as is evident from the similarity in expressions. Thus T. 9b and 10 have in common חבית שנשברה, and the phrase מביא כלי ונותן, T. 9 and 14, מסתפקין; T. 9 and 11 נתמלא.

On the other hand, T. 15-18, which likewise comments upon M. 6, and presupposes 6b before 6a, emanates from a different source. Thus, 15a אין מטלטלין corresponds to M. 6b מטלטלין נר חדש; 15b-18a סבין is brought in because of 6a לקבל בו את השמן; T. 18b מפתפסין את הכיפין (cf. M. XXIV 2) is permitted because it is considered מן המוכן, so M. XXIV, 4, where this point is explicitly mentioned. Hence, T. 18b is related to 6b, which also speaks of מן המוכן.

## CHAPTER IV

One of the last acts to be performed before the advent of the Sabbath<sup>1</sup> was the putting away of food in order to keep it warm.<sup>2</sup> (Cf. M. II, 7 and T. II, 10.) M. 1a enumerates nine objects into which one may not place food so that it retains its heat, whereas M. 1b-2a specify eight things which may be used for this purpose, including two which may not be handled on the Sabbath. Finally, we learn that it is permitted to put cold food away to keep it cool. From the discussion in Babli 51a it appears that this point represents Rabbi's later view, which he modified in accordance with R. Yose's opinion.

## TOSEFTA

T. III, 19-23, corresponds to M. IV. T. 20a אין טומנין את החמין בתחילה בשבת, which contradicts M. 2, לא כסחו מבעור יום לא יכסנו משתחשך, presupposes the latter statement to have preceded the phrase כיצר הוא עושה. T. 22b, containing the statement of R. Judah, which refers to M. 1, is clearly out of place. It is interesting to note that the parallel baraita in Babli 51b has this statement misplaced. Most likely the Babli text is derived from the Tosefta.

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1. Cf. M. 2 where it is implied that it must be done מבעור יום.
  2. It is interesting to note that an authority as early as R. Eleazar b. Azariah discusses this point of ritual.

## CHAPTER V

Ch. V and VI treat of the law of carrying on the Sabbath and accordingly belong after ch. VII. They are inserted at this juncture because they form part of the collection of *במה* Mishnahs. That animals are not permitted to work on the Sabbath is explicitly mentioned in Exodus XX, 10 and Deut. V, 14. Hence, the rabbis prohibited that an animal wear appurtenances that might be considered a burden.<sup>1</sup> The Mishnah, as is very frequently the case, assumes this law, and proceeds to discuss it in detail. M. 1-2 specifies the kind of equipment that may be worn by an animal without infringing the law. The following animals are enumerated (1-2) two species of camels, (3) Lycaonian wild donkey, (4) horse, (5) donkey, (1) ram, (7) ewe, and (18) goat. M. 3-4 explain what is prohibited, and the following animals are dealt with: (1) camel, (2) donkey, (3) chicken, (4) ram, (4) ewe, (6) calf and (7) cow.

A different sequence, however, in the arrangement of the M. is presupposed in the Tosefta, namely, 1a, 2b *רחלות יוצאות כבונות*, 4a, *שחוזות כבולות*, 3a, *חמור*, 4b, *גמל*. It is difficult to ascertain which was the original order.

## TOSEFTA

T. IV 1-5 correspond to Ch. V of the M. T. 4a. *הסוס יוצא* is out of place and originally was found after T. 1b, as is evident from the fact that both use the same word *נמשכין*. Otherwise, the passages in the T. are in their correct order.

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1. Cf. Mekilta di R. Shimon 109, Y. Shab. V. 3 the statement of Rabbah *אדם מצוה על שביתת בהמתו* and Tosafot Shab. 51b s. v. *במה*.

## CHAPTER VI

In M. VII. 2 merely carrying is forbidden, but it seems that this prohibition was extended to include carrying on one's person, i.e., the wearing of certain articles of dress was considered a transgression of the law<sup>1</sup> **ואל תשאו משא ביום השבת** (Jer. XVII, 21), as may be inferred from T. XII, 14, **סנדל שנפסקה אחת מאוניו יוצאין בו בשבת שתיים אסור מפני משאוי שבת** cf. also Yer. Shab. VI, 1. M. 1 enumerates ten articles of dress<sup>2</sup> a woman may not wear on the Sabbath when going out on a public domain, but an unwitting transgression of this ordinance does not require her to bring a sin-offering, and in M. 2 a similar rule is laid down in regard to seven kinds of men's furnishing.<sup>3</sup> M. 3 prohibits a woman from wearing five kinds of clothing under the penalty of bringing a sin-offering.<sup>3a</sup> M. 4a bars a man from carrying weapons on the Sabbath under the same punishment.

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1. En passant, it may be remarked that the Biblical text here and in Nehemiah XIII, 15ff. does not forbid carrying, but transporting goods to the market. It is most likely that carrying was interdicted towards the end of the second commonwealth. Cf. M. Sukkah III, 13.

2. Concerning **עיר של זהב**, we learn from T. IV, 6 that the M. has adopted the opinion of the sages, which represents the middle view between R. Meir and R. Eliezer. The latter's view had been known to R. Akiba. (cf. M. Edyot II, 7.) The word **עיר** is Assyrian, meaning disc, as was pointed out by J. Halevy, Documents Religieux de l'Assyrie et de la Babylonie, Paris, 1882, p. 130. From T. IV, 6b it would appear that the phrase **שהן תפורין בזמן** originally followed **עיר של זהב** in our M. Similarly, from T. IV, 7 in regard to **איסטמא** one may infer that **כבול**, too, was originally mentioned after **עיר של זהב**. En passant, it may be remarked that the statement about **כבול** is in contradiction to the view of R. Shimon b. Elazar, as expressed in a baraita in Babli 57b.

3. The reading in the M. **וקמיע שריון** is surprising; one would expect **סנדל המסומר** to be mentioned together with **שריון**; cf., however Yer. Shab. VI, 2 **יוצאין בתפילין ערב שבת עם חשכה ואין יוצאין בסנדל המסומר ערב שבת עם חשכה**, Studded shoes are mentioned by Clement of Alexandria. Instructor I, 12, and Origen de Principiis IV. 17. It is interesting to note that later medieval authorities did know exactly what was meant by **המסומר** cf. Shibbole ha-Laket 107 (ed. Buber, p. 76). See also Krauss Archaeologie I, p. 621-2, note 683, Ehrentreu, J. J. L. G. VIII (1910), 23-29 and Bet Talmud II 254.

3a. Cf. Ginzberg, Die unbekannte Juedische Sekte, p. 159, note 3.

M. 4b טהורה בירית and M. 8b טמאין שלו סמוכות were originally not in this treatise, as they are primarily concerned with the law of impurity.<sup>4</sup> M. 5, 6b and 7 specify the articles a woman may lawfully wear on the Sabbath. M. 6a, as is indicated by the word יוצאין, disturbs the context and is out of place, but was inserted here because of the previous statement concerning the wearing of an artificial tooth (5b).

M. 8a continues the discussion concerning an artificial leg. M. 9, like 6b, mentions the law concerning the apparel of boys and princes. M. 10 states which articles are permitted for their curative value. However, a different and in part a better sequence for the passages of the M. is presupposed by the Tosefta. For M. 1-4a there is the same order in the T. IV, 6-11b. Then followed M. 5, 6c, 7 to which T. IV, 11c-12, 13 correspond. Then followed M. 4b, 8, to which T. V, 1-2b belong. Then followed M. 6a יוצאין בפלע which is elaborated in T. 2b-6.<sup>5</sup> Then M. 9b ובני מלכים בוונין, which is explained in T. 7-8. Then followed M. 9a הבנים יוצאין בקשרים. These garlands were used for medicinal purposes, as is explained by the commentators, (cf. Ozar ha-Gaonim II, 65 ed. Lewin.) Hence T. 9 להריח בהן לחולה comments upon this passage. Then followed M. 6b בקיסמין שבאניהן which is commented upon in T. 10. Then the phrase in M. 9c<sup>6</sup> אלא שדברו חכמים בחוה called forth the statement in T., 11-14. To sum up, the sequence of the M. that the T. had before it, was 1-4a, 5, 6c, 7, 4b, 8, 6a, 9b, 9a, 6b, 9c, 10.

4. This passage of the M. was originally in Kelim and was only later added to the treatise of Shabbat. This may be inferred from the fact that the statement begins בירית טהורה, whereas in this treatise one would expect it to read בשבת וטהורה היא בירית יוצאין בה ככלים, which belongs to this category, should have been stated first. Thirdly, M. 4a uses the future tense לא יצא, whereas 4b the present tense, לא יוצאין, and לא יוצאין.

4a. Cf. R. E. J. VII, 168, note 1.

5. That T. 2b-6 is a comment upon M. 6a, and not M. 5b, which also speaks about carrying things for medicinal purposes, may be proved from the fact that both M. 6a and T. use the plural יוצאין, whereas M. 5a employs the singular יוצאה.

6. According to Sherira, this formula was added by Rabbi and did not form part of the old halakah. See his Letter, ed. Lewin, page 25.

## TOSEFTA

T. IV, 6-VII, 25 correspond to M. VI. T. IV, 6-V, 13 forms a unit, except T. IV, 7, which seems to have been found originally in the treatise Kilaim. That the T. is in part derived from a different source from that of the M. may be inferred from the fact that it uses אדם in T. IV, 8, V. 1, 7, instead of איש as the M. does. The phrase ואם נפל לא תחזיר in M. VI 5 gave rise to several passages in the T. which employ it, namely T. IV, 12; V. 1, 3, 5.

The phrase נוטלה ומכסהו בו את הכלים is found in T. IV 8 and V, 6. Most likely they were taken from the same source.

T. IV, 11b, אליעזר פוטר בכובלת וחכמים פוטרין בצלוחית ר' אליעזר פוטר בכובלת וחכמים פוטרין בצלוחית של פוליטון is corrupt. The correct text of this passage is transmitted in the parallel baraita in Babli 62 a. לא תצא בכובלת ואם יצתה חייבת חטאת דברי ר' מאיר. וחכמים אומרים לא תצא ואם יצתה פטורה ר' אליעזר אומר יוצאה אשה בכובלת לכתחילה. cf. T. IV, 6, where similarly three views are given in regard to עיר של זהב. In the Babli too l.c. this baraita is also cited in fragmentary and incorrect form. The attempt on the part of the amoraim to harmonize the two texts is unsatisfactory. T. V, 1a אדם בסיסם שבשיניו ושכסנדלו is not the original text although the reading is attested by Maimonides, Hilcot Shabbat XIX, 13. First, it is not likely that even in early times one would walk with a toothpick in his teeth in a public domain; secondly, nor would one put back a toothpick into one's mouth after it had fallen on the ground, even if the knowledge of hygiene of the ancients was primitive in many respects.<sup>7</sup> Hence, the word שבשיניו should be deleted. The statement אדם בסיסם ביוצא אדם בסיסם שבסנדלו would supplement M. 4b,<sup>8</sup> which deals with the law concerning the wearing of knee-bands and ankle-chains.

In regard to T. 9-10 and 11-14, it should be noted that in T. Bezah III. 17-18, the opposite sequence is found. T. 17 והרועים יוצאים בסקים = T. 13 ולא הרועה בתרמילו, and T. 18, שלא יקטמנו לחצות בו שיניו = T. 10.

7. Cf., however, Nobel. Zahnheilkunde im Talmud, Leipzig, 1909, p. 30.

8. T. V, 11 may not be taken as a comment upon M. 5. יוצאה אשה במוך שבסנדקה for this M. is headed יוצאה אשה.



T. VI-VII,<sup>9</sup> devoted to the enumeration of the ways of the Amorites, supplements the reference to these superstitious practices made in M. VI 10.<sup>10</sup> It is noteworthy that in Ch. VI all the statements are given anonymously, whereas in Ch. VII authorities as early as R. Akiba and R. Ishmael are cited. In the two chapters only one paragraph, namely, VI, 23, is connected with the law of Sabbath. From the Sifra it is evident that already before R. Meir, there was a special chapter devoted to the Amorite practices, for commenting upon Lev. XVIII, 3<sup>11</sup> "Ye shall not walk in their statutes," R. Meir observes, "these are the Amorite ways enumerated by the sages," and from the statement of R. Judah b. Bathyra (1.c), it is clear that the collection he was familiar with did not begin as the one in the T.

In Shabbat 67a, mention is made of a chapter dealing with the superstitious practices of the Amorites, which existed in the time of R. Hiyya bar Abin,<sup>12</sup> a fourth century Amora. While the single passage cited from this chapter is actually found in T. VII 21, one is not warranted in drawing any conclusions as to the identity of the two collections.

Incidentally, it may be remarked that these two chapters have not been exhausted as yet for the invaluable folk-lore material. Heinrich Lewy<sup>13</sup> has translated most of the passages and cited quite a number of parallels from classical literature. Blau, *Das Altjuedische Zauberwesen*, 2nd ed., Berlin, 1914, and Scheftelowitz, *Alt-Palastinensischer Bauernglaube*, discussed a number of passages as well as other scholars.<sup>14</sup>

9. These two chapters are quoted in toto in Yalkut Lev XVIII 3.

10. Two practices are designated as ways of the Amorites in M. Hullin IV 3, which are found in the T. VI-VII.

11. It appears surprising that the rabbis speak of Amorite ways, although this verse explicitly refers to the Canaanites. However, it seems that this appellation is due to the fact that the Bible itself often designates the various peoples of Canaan by the general name "Amorite." See Neumark, *Journal of Jewish Lore and Philosophy*, p. 404; cf. also Ginzberg, *Legends of the Jews*, VI, 178; Kohler J. E. I 529, s. v. Amorites.

12. Cf. R. E. J. III' 281.

13. *Zeitschrift des Vereins fuer Volkskunde* III, 1893.

14. Krauss, *Magyar Zsidó Szemle*, 1892, p. 174-5, 249; L. Dukes, *Philosophisches aus dem Zehnten Jahrhundert*, p. 5, note 2; cf. also J. J. L. G. XII, 227-228; R. E. J. 57, 300; Goldziher, *Archiv fuer Religionswissenschaft*, X, 41-46; Buechler, *W. Z. K. M.* XVII, 179.

## CHAPTER VII

Chapter VII originally formed the beginning of the treatise of Shabbat, which commenced with M. 2 that contains an enumeration of the thirty-nine labors prohibited on the Sabbath. This change in sequence is pre-supposed in T. VIII, 1-4 which gives comments upon certain of the works mentioned in M. 1<sup>1</sup>. Furthermore, M. 3 כָּלל אַחַד אָמְרוּ presupposes that M. VII, 1 כָּלל גְּדוּל immediately preceded it. Hence the chapter actually began with M. 2.

The older sequence was deliberately changed by the compiler of the M. or his source, because he desired to start the chapter with the imposing phrase כָּלל גְּדוּל, as in Shebiit VIII, 1.<sup>2</sup>

In M. 1 the original reading was כָּל שְׂאִינוּ יוֹדֵעַ עֵיקַר שֶׁבַת as is preserved in the variant readings of the תַּנְיֵי דְּבֵית רַבִּי<sup>3</sup> and is also presupposed in T. VIII, 5<sup>4</sup> and Sifra (ed. Weiss, p. 16b.). Similarly, the early Babylonian Amoraim Rab and Samuel had the reading מִי שְׂאִין יוֹדֵעַ as is manifest from the statement in Babli, 68a,<sup>5</sup> מִתְּנִיתִין בְּתַנּוּק שְׁנִשְׁבָּה לְבֵין הַנִּכְרִים וּלְבִסּוּף שִׁכָּה חַיִּיב עַל כָּל שֶׁבַת וּשְׁבַת. Hence the later amoraim who had the reading הַשּׁוֹכֵחַ, had difficulty in understanding this statement of Rab and Samuel, which was in contradiction with the version of the M. they knew.

1. T. VIII 1-4 does not comment upon M. XIII' 1-5, as Schwarz thought (*Die Tosifta Shabbat*, p. 45), for that M. has its corresponding explanations in T. XII. 1ff.

2. Cf. Babli, 68a, מ"ט תנא כָּלל גְּדוּל מִשּׁוּם דְּקִבְעֵי לְמִיתְנֵי עוֹד. כָּלל אַחַד תְּנָא כָּלל גְּדוּל.

3. Cf. Yer. VII 1, where the *textus receptus* is cited as וְאֵין תְּנִינָן כָּל הַשּׁוֹכֵחַ עֵיקַר שֶׁבַת.

4. Cf. Gandz (*Schwartz Festschrift*, 249), who maintains that in the T. R. Akiba had before him the reading מִי שְׂאִין יוֹדֵעַ and Monobaz כָּל הַשּׁוֹכֵחַ, but it seems to us that both read מִי שְׂאִין יוֹדֵעַ.

5. Similarly, according to Yer. VII 1, this reading was known to Rab מִן מַה דְּרַב תְּנִי מִמִּתְנִיתִין וּפְתַר לָהּ אִי זֶהוּ שְׂאִינוּ יוֹדֵעַ עֵיקַר שֶׁבַת קָטַן שְׁנִשְׁבָּה בֵּין הָעֵכוּם.

On the other hand, the Palestinian amoraim R. Yohanan and Resh-Lakish had the reading כל השוכה, as may be inferred from the statement in the Babli l. c. דוקא הכיר ולבסוף שבה אבל תינוק, שנשבה בין הנכרים וגר שנתנייר לבין הנכרים פטור, as well as R. Elazar, as we learn from Yer. l. c.

Thus it appears that the older reading of the Mishnah was known to the early Babylonian authorities,<sup>6</sup> whereas the later version was transmitted by the Palestinian<sup>7</sup> and late Babylonian scholars.

M. 2 enumerates the thirty-nine prohibited labors connected with the four principal occupations, agriculture, cattle-raising, hunting and building. Carrying is in a class by itself and was introduced in order to insure the observance of the old law against marketing. Originally one word was used to describe each work,<sup>8</sup> e. g. הזורע etc. Later on, explanatory glosses were added to some, e. g., הזגוזז את הצמר an expansion of הזגוזז, as may be seen from T. VIII, 1, where not only the shearing of wool is prohibited, and similarly הצר צבי read simply הצר, cf. T. VIII, 2. For תניין T. VIII, 21 has the interesting variant נמיין.

M. 3, an old halakah, states the general principle in reference to carrying. The words, ומצניעין כמוהו is an explanatory gloss. Inasmuch as this statement was too vague, detailed regulations grew

6. This is also evident from the baraita in Shab. 68b. There, however, the text of the baraita is corrupt. The reading השוכה עיקר שבת can not be original, as the subsequent statement reads כיצד תנוק שנשבה לבין הנכרים, as the amoraim had already felt. קתני מיהת כיצד תינוק בשלמא לרב ולשמאל ניהא. Undoubtedly the baraita had been changed by one of the memorizers who had been familiar with the later text.

7. According to the Yer., R. Yohanan had the same version of the M. that Rab and Samuel had. This is just the opposite of what is said in the Babli. However, in this particular instance it seems that the Babli has the sounder tradition. Noteworthy is the fact that in all the sources in the Babli תינוק is used and in the Yerushalmi קטן. However, no conclusion may be drawn from this difference, for these two terms are used interchangeably. For example, קטן is also used to denote an infant cf., M. Sukkah II, 8 and תינוק to designate a person who has not reached physical maturity. See Niddah X, 1.

8. Cf. Tosafot Shabbat 73a, s. v. העושה who already made this observation.

9. Similarly in M. Yoma VIII, 2 כמוהו וכגרעינתה is a later addition cf. Hoffmann, J. J. L. G. VII, 1909, p. 308-309.

up defining minutely the minimum quantity of objects forbidden to be carried on the Sabbath in M. VII 4 - VIII 7; IX 4 - X 5; XI, 1-6.

M. VII, 4 determines the law concerning carrying solid food, VIII, 1a, beverages, VIII, 1b, oils, which is the customary sequence, cf. M. Maaser Sheni I, 7; II, 1; Yoma VIII, 1. The T., according to the Erfurt MS., follows a different order,<sup>10</sup> namely (1) beverages, (2) solid food, (3) oils. The order of the M. seems to be the more natural one. M. VII, 4 first lays down the rule concerning fodder, and then that concerning human food. Perhaps the compiler had in mind the fact that it is a duty to feed one's animal before one partakes of food (Gittin 62a). However, T. 9 implies the reverse sequence, namely, 4b, 4a.

### TOSEFTA

T. VIII, 1-9 correspond to M. Chapter VII. T. 4 limits the law in regard to the works forbidden on the Sabbath, so that one who impairs something as a consequence of performing a prohibited act on the Sabbath is not guilty save in the case of wounding, or kindling a fire. This T. agrees with M. B. K. III, 10 and VIII, 5, and contradicts M. Shab. XIII, 3. In Babli 106a, where this Tosefta is cited, the contradiction is solved by assuming that M. Shab. represents the view of R. Judah, whereas the T. transmits the opinion of R. Shimon. The earlier halakah in regard to the minimum amount of foodstuffs that is forbidden to be carried on the Sabbath, is found in T. IX, 19 (cf. also T. VIII 9) in connection with the law concerning the minimum quantity that constitutes a violation of the law of baking; food, the size of a dried fig, (cf. M. Meilah IV, 5) fodder, enough to fill a goat's mouth, dyes, enough to dye a small garment, cf. M. Shab. IX, 5; for other objects the minimum quantity is the same that is required that they become susceptible to impurity. Our M. complicates the law still further by requiring different minimum quantities for four different kinds of fodder.

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10. The editions of the T. present the following order: (1) solid foods, (2) oil, (3) palm leaves and bast, (4) liquids. It is quite clear that this cannot be the original sequence, and hence we preferred the text in Zuckerman.

T. 6a *השובח את התורה ועבר עברות הרבה חייב על כל אחת ואחת* is derived from a different source than T. 5, for it presupposes the reading *כל השוכח עיקר שבת* in M. 1. This passage, supplementing the first statement of the M., informs us that if one loses knowledge of various religious laws, presumably through forced retirement from Jewish society,<sup>11</sup> and in this state of ignorance neglected to observe them he is guilty for each separate offense.

T. 6b *כיצד היה יודע שיש חלב ואמר אין זה חלב שחייבין עליו*<sup>12</sup> is not a continuation of T. 6a, for here it is not a question of ignorance of the law, but rather an erroneous understanding of it. It supplements M. 1c, *היודע שהוא שבת ועשה מלאכות הרבה*, which is formulated in Sifra 16b as follows:<sup>13</sup> *היודע שהוא שבת ומעה ואמר* T. 6b seems to be excerpted from some Tannaitic source similar to the passage from the Sifra.

T. 9a disagrees with M. VII, 4 in regard to *מורסן* which does not consider it as food. The T. applies to *מורסן* the principle of the old halakah and hence, if it is used for food,<sup>14</sup> the minimum quantity is a dried fig, for fodder,<sup>15</sup> a goat's mouthful, for dyeing,<sup>16</sup> enough to dye a small garment.

T. 9b presents other cases similar to *עלי שום*, which are sometimes used for food, sometimes used for fodder, and the minimum quantity is fixed accordingly. In agreement with M. Uktsin III, 4, T. III 9, and T. Maaser Sheni I, 13, this passage should be correct to read *לולבי זרדין וחורבין משימתיקו כגרוגרת עד שלא ימתיקו כמלא פי גדי*.

11. Cf. Yer. Shabbat VII 1 *אשכח תני בשם ר' אליעזר גדול שנשבה לבין העכו"ם חייב על כל אחת ואחת*.

12. Cf. Shabbat 68b *וחייב על הדם אחת ועל החלב אחת* Tosafot l.c. s. v. *וחייב* called attention to the difficulty of this passage. It seems as if something has been left out; cf., however, Pinneles, *דרכה של תורה*, p. 84-86.

13. Cf. T. Shab. X, 19.

14. See M. Hallah, II' 7 where bran is subject to the law of Hallah, cf. Shabbat 76b, where Abaye attempts to harmonize the contradiction between the two passages, but cf. M. Terumot XI, 5, where it is stated that bran is not subject to the law of Terumah.

15. Cf. M. Pesahim II 7 where bran is mentioned as feed for fowl.

16. Cf. T. Shebiit V 8 and Yerushalmi V 39a, which refer to its use as dyestuff.

## CHAPTER VIII

This chapter continues the discussion about the minimum quantity of things prohibited to be carried on the Sabbath. M. VIII 1 mentions the rules concerning liquids. It is noteworthy that the text in the Mishnah of the Yerushalmi differs in some points from the editions.<sup>1</sup> It reads as follows: wine, blood, milk, honey, oil, water and the other liquids. This most likely represents the original text. The sequence in the Tosefta is slightly different: wine, milk, water, blood. The T. omits oil here, but mentions it later on in paragraph 10. In the editions of the M., oil and water are mentioned together, as are milk and water in the T., because the minimum quantity is determined from the point of view of their medicinal use.

The anonymous statements concerning wine and water in M. I are respectively the views of R. Judah<sup>2</sup> and R. Eleazar as may be inferred from T. VIII 8. The statement in the M. concerning milk presented an ambiguity to later scholars and hence we find in the T. an anonymous authority and R. Judah differing as to the kind of milk that was intended. The one held that human milk; the other maintained that milk of animals was meant.

In M. 2 the statement *המוצא קשר מוכסין חייב* is a later gloss. M. 4 is an interesting illustration of the fact that the Tannaim were attentive to the form in which the halakot was expressed. One of the features of the Mishnaic style is parallelism. In this Mishnah, six statements are given where the phrase *כדי ליתן* and *כדי לעשות* alternate. The last statement about *סיד* was originally in M. 5b, as is presupposed in T. VIII, 20.

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1. This is implied from the order in which the laws concerning the various liquids are discussed in the Yerushalmi. The reading of the Mishnah in the first edition of the Yer. agrees with that of the Babli, because the original text has been altered by the scribes to abolish discrepancies between the various texts of the Mishnah.

2. The anonymous baraita in Babli 77b agrees with R. Judah.

M. 5, which contains a difference of opinion between R. Akiba and the sages concerning the quantity of dirt that is prohibited to be carried, is the later halakah. 'The older formulation of the law is found in T. 19a, which reads חול עפר ואפר שעורין בכזבל'. That the former is the later halakah is evident from the fact that it makes a distinction between fine and coarse sand, and secondly, there is a controversy over the phrase שעורין בכזבל.

M. 6 seems to have read originally צרור אבן as is presupposed in T. VIII, 22, cf. Prov. XXVI, 8.

### TOSEFTA

T. VIII, 8-22, which correspond to M. Ch. VIII, form a unit, with the exception of T. 17-18, which did not originally belong in this chapter. It seems that they are later glosses which finally came into the text. T. 13 should be corrected to read in accordance with the Babli as follows: דוכסוטום כדי לכתוב עליו מזוזה וקלף כדי לכתוב עליו פרשה קטנה שבתפלין.

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3. En passant, it may be noted that this passage with the Biblical phrase עפר ואפר (cf. Gen. XVIII 27) seems to be unique in Tannaitic sources. The word אפר, meaning dirt, occurs very rarely in Tannaitic sources; cf. the baraita in Shab. 18a אחד נותן את האפר, where the Talmud rightly says מאי אפר עפר דבר גידוק הוא. The explanation of the amoraim is corroborated by the parallel passage in T. Shab. XI 18, עפר. . . שבא בירק מצטרפין כחותם המרצופין. Note that the M. uses אדמה instead of עפר. cf. M. Oholot XVII, 5 דברי ר' אלעזר.

Hence, R. Akiba's view in M. VIII 5 אדמה כחותם המרצופין would be in accordance with the old halakah in T. IX, 3, 19, ושאר כל הדברים, cf. also Babli 79a.

## CHAPTER IX

Ch. IX, only in part, continues the discussion concerning the laws of carrying found in the previous chapter, for M. 1-4 is an interpolation containing a number of passages beginning with the word מנין, none of which has anything to do with the law concerning carrying.

Why were these מנין passages introduced into the M. at this juncture? Rashi<sup>1</sup> believed that the reference in M. 3b to circumcision on the Sabbath was the reason for the insertion of the מנין statements here. However, the Tosafot (Shab. 82a) reject Rashi's explanation. If his view were true, they argue, then the מנין passages should have commenced with M. 3b which deals with the Sabbath. Furthermore, it would have been more appropriate to have added these מנין statements somewhere in Ch. XIX, where the regulations concerning circumcision on the Sabbath are outlined.

The Tosafot in turn offer a hypothesis of their own. According to them, the statement of R. Meir in M. 7 adducing Biblical proof for the halakah concerning carrying a potsherd, reminded the compiler of a group of מנין statements which also cite Biblical source for various halakot. This theory of the Tosafot would seem to gather plausibility from the fact that M. 4 actually uses the same phrase ואף על פי שאין ראיה לדבר זכר לדבר שנאמר, and M. 3b might also have contained this formula (if one may infer from the baraita in Shab. 134b) employed by R. Meir in M. 7.

However, the view of the Tosafot does not fully explain, because the word מנין with which every halaka in M. 1-4 begins, does not occur in M. VIII, 7. We venture to offer the following conjecture, which will indicate the reason for the presence of the מנין passages not only in the M., but also in the Tosefta.

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1. Shab. 82a s. v. אמר ר' עקיבא.



Originally, M. 5b כדרי לצבוע בהן בסבכא (2) ... to the end of the paragraph, and M. 6b יהודה ר' כל שהוא (3) אומר אף המוציא עכום כל שהוא שנאמר שלא ידבק בך מאומה מן החרם concluded Ch. VIII. It is the statement of R. Judah dealing with the furniture of idols that recalled to the compiler the group of מנין Mishnahs, beginning with במשא שמטמאה במשא. On the other hand, the compiler of the T., having before him the statement about dyeing כדרי לצבוע בהן בנגר קטן incorporated at this juncture a group of מנין statements beginning with מאדים שהוא חייב <sup>6</sup>.

M. IX 1-4 constitute a group of statements older than our present treatise of Shabbat.<sup>6</sup> According to Bacher<sup>7</sup> this מנין collection has R. Akiba as its author because the first statement is given in his name, and the rest are anonymously stated. This view, however, is unconvincing for several reasons. First, the name of R. Akiba is mentioned in connection with the first M. to indicate that the sages disagree with him on this point, as we learn from M. Abodah Zarah III, 6. Secondly M. IX, 3a could be in accordance with R. Ishmael as well as with R. Akiba, both of whom differ with R. Elazar b. Azariah,<sup>8</sup> as is evident from M. Mikwaot

2. That this statement is not in its original position may be deduced from T. IX 7. It is true that according to the latter, it should have been at the end of Ch. IX. On the other hand, the baraita הכורית והחול, Shab. 90a, would seem to indicate that this Mishnah was part of M. VIII 5. Furthermore, the statement about קליפי אנוזים interrupts the discussion about spices תבלין which is continued in M. 6a פלפלת. At any rate, it may be safely assumed that M. 5b was at one time in a different context.

3. M. 6b, beginning with ומיני מתכות is out of place because it, too, interrupts the discussion about spices in 6a מיני כשמים, which is continued in 7a, where קופת הרוכלים is mentioned. It is quite evident that the compiler of M inserted the statement about metals in paragraph 6, because it was one of a number of statements with the minimum quantity was כל שהו, but in the T. they are found in two different places, cf. T. VIII 32 and IX 4.

4. Cf. Babli 83a and Yer. IX 1 ע"ז כנדה ומשמשיה כשרץ.

5. Note the Biblical term מאדים instead of צובע cf. Yer. VII 2.

6. Each of these מנין passages adduces as proof for the halakah a verse from the non-pentateuchal part of Scripture, e. g., 1, 2, 3, 4, or from the non-legal section of the Pentateuch, as 3a, but no verse is cited from the strictly legal part of the Pentateuch.

7. Die älteste Terminologie I 53, note 3; cf. also Rosenthal, Zusammenhang der Mischnah I, 1918, p. 119.

8. According to Mekilta di R. Shimon p. 99, where the opposite view is attributed to R. E. b. A., our M. would actually represent his opinion.

VII. 3 (T. VI, 6) and Shab. 86a, whereas M. IX, 3b represents the view of R. E. b. A.,<sup>9</sup> and M. IX, 3c transmits the later view concerning the ceremony of the crimson thread.<sup>10</sup> Owing to insufficient data in other sources as to R. Akiba's standpoint in regard to the points covered in M. IX 1-4, it cannot be proven that the מנין Mishnahs are his, but there can be no doubt that this collection is the source for these passages, which were repeated elsewhere in the M.<sup>11</sup>

After the interpolation, the M. resumes the exposition of the law of carrying. M. 5 defines what is the minimum quantity for spices, and materials used for dyes. M. 6 enumerates various objects including spices, whose minimum quantity is כל שהוא. M. 7 lays down the rule concerning spices, seeds and animals. A different order, however, is presupposed by the T., namely 7b 5b, כלי מתכות, 6a, חגב חי, 7c, מאבני מזבח, 6b, ורעוני בינה, קליפי אגוזים, but it hardly represents the original order.

### TOSEFTA

T. VIII, 23 - IX, 7 correspond to M. Ch. IX. The T., too, begins with a series of מנין statements as the M. does. Here the first statement actually deals with the law of the Sabbath.

9. Cf Shabbat XIX' 3, where the reading is מרחיצין את הקטן.

10. According to the bar. in Yoma 67a, the custom mentioned in M. Yoma VI, 6. represents the third stage in the development of this ritual, cf. also Yer. VI 5, according to the reading of Isaac Arama, cited by Ratner, p. 72. Derenbourg (*Essai de restitution de Massechet Kippourim*, p. 11), and Hoffmann (*Die Erste Mischnah*, p. 19), however, regard this M. as belonging to the oldest strata of the M. R. Ishmael in Yoma VI, 8 is the oldest authority mentioned by name who cites Isa. I 18, in connection with the crimson thread. The miracle of the crimson thread is said to have taken place as early as the time of Simon the Righteous, Yoma 39a, Yer., VI, 3. Noteworthy is the fact that this statement is omitted in the parallel passage in T. Sotah XIII 7.

11. Not all the passages are found elsewhere in the M. Thus, M. IX 2a is cited in Tosefta Kelim BK. II 3 (Shab. 84a), in the name of R. Jose, without the Biblical verse; cf., also, Shab. 83b, where R. Hananiah derived it by analogy from שש. M. IX 2b is quoted in M. Kilaim III 1, but also without Scriptural proof. M. IX 4 is not cited elsewhere in the M., but seems to have been known to the Amoraim in Niddah 32a. That the law of applying to partaking of food applies also to anointing is presupposed in M. Shebiit VIII 2; Maasher Sheni II 1, and Yoma VIII 1. In regard to Terumah, it is inferred from Leviticus XXII 5, cf. Sifra ad loc. (ed. Weiss 98a), Y. Yoma VIII 1, Maaser Sheni II' 1. For the Day of Atonement cf. Sifra 83b (ed. Weiss) quoted in Yoma 74a by Rabbah and R. Joseph.

As pointed out above, M. IX, 5 **קליפי אגוזים כרי לצבוע** was originally found at the end of Ch. VIII, and hence T. 23 continues with the remark<sup>12</sup> **מנין למאדים בשבת**. T. 23b **איזה היא חבורה**<sup>13</sup> is the only passage in the group of **מנין** statements that does not begin with that word. It seems that originally the statement **מנין לחבורה שאינה חוזרת**<sup>14</sup> formed part of these **מנין** passages, and for some reason was omitted; the statement **איזה היא חבורה** is actually a comment upon that passage.

T. 23c-28 undertakes to prove by citation from Scripture that eight<sup>15</sup> fluids make foods susceptible to the levitical law of impurity. In reality, nine fluids are presupposed, since water is omitted as it is implied in Leviticus XI 34. What is the relation of the T. to M. Makshirin, which enumerates only seven fluids? R. Abraham b. David, in his commentary to the Sifra, considers the last three fluids, **דם הנרה**, **דמעת העין**, and **מי האף** as examples of derivatives of water mentioned in Makshirin VI, 5. It is doubtful whether this is implied in the T. On the contrary, from the fact that the T. adduces special proof from the Bible for the two fluids that issue from the human body, one is inclined to believe that they were not considered as **תולדות**. Hence the T. disagrees with the M. that there are only seven, as does R. Eliezer<sup>16</sup>, as we learn from M. Terumot XI 2. R. Joshua, however, (l. c.) insists upon the seven enumerated by the sages, and later R. Shimon b. Yohai

12. Cf. note 5.

13. Cf. the parallel baraitot in Babli 107b, Yer. VII 2.

14. In Shab. 107b, R. Levi inquires of Rabbi concerning the meaning of this text.

15. Although the Tosef. makes special mention of **דם נרה**, it is quite evident that it is a later gloss, and did not form part of the original text. First, the verses Lev. XX, 18 and Zech XIII, 1 do not prove that it is a fluid. In all the other verses cited there is an explicit reference either to drinking, or a comparison with water. Secondly, Maimonides and Bertinoro, in their commentary to M. Makshirin VI, 4 quote this T., but without this passage. It should be noted that R. Simson, in his commentary ad loc., as well as R. Abraham b. David in his commentary to Sifra, 54d (ed. Weiss), had this passage in their text of the T.

16. It would seem, therefore, that the **מנין** passages of the T. are as old as the time of R. Eliezer, for in later times the principle of the seven fluids seems to have been accepted without controversy. It should be observed that the T. enumerates the liquids in a different order than the M.

followed him (Yer. Ter. XI 2). Noteworthy is the fact that the T. uses the expression *דמעת העין* for the Mishnaic *היוצא מן העין* and *היוצא מן החוטם* for *מי האף*.

T. VIII, 29 *מנין לזרוע שהוא יד* is peculiar; one would expect it to read *מנין ליד שהוא זרוע*, for the Bible throughout speaks of laying Tefillin on the hand (*יד*) (cf. Ex. XIII, 16, Deut. VI 8 cf., however, Menahot. 37a *אין לו זרוע פטור מן התפילין*, Berakot 6a *ובזרוע עוזו אלו תפילין* and Pesahim 113b, T. Ber. VII, 25 and parallel passages.

T. VIII 30 is presupposed by M. Yoma VIII 6 and seems to have been known to Abaye, Babli 83b and to Yer. VIII 6.

T. VIII, 31 - IX, 7 resume the discussion concerning the regulations about carrying. T. 31 *המוציא שני נסרים* should read as the Yer. VIII, 2, *נצרים* and *נצרים* שני for *כלי*. However *נצרים* and *נצרים* are interchangeable cf. M. Bik. III, 8 and Kelim XX, 2, where *כלי נצרים* are found with the variant reading *נצרים*. In this group of T. passages, every one begins with *המוציא*, except paragraph VII, 33 and X, 5-7.

It seems that we have here double commemmts upon the M. For T. VIII, 31-IX 3 are derived from one source, and a later compiler added T. IX, 4-7 as comments upon the same chapter. The first source commented upon M. 7b *זרעוני גינה*, 6b *מאכני מובה*, 7c *לרפואה*, 7d *חנב חי*, and the second source upon M. 5a *המוציא עצים*, 6b *כלי מתכות*, 5b *כדי לצבוע*. Note that in T. 5-7 most of the statements are put together because they contain the word *קטן*. As for the individual passages, T. VIII 32 is the view of R. Eliezer b. Hisma, as may be inferred from M. Negaim XIII 3 (cf. T. VII 2).

T. VIII 33 is actually a comment upon M. VIII 3, but is inserted here because of M. IX 7, which contains the remark *שמצניעין אותו לרפואה*. In T. 34, R. Natan contradicts M. 7. T. 4b opposes M. Bez V, 5. T. 5 conflicts with M. 6, which says *מיני מתכות כל שהן*. T. IX, 7 in regard to *ארגמן*, is consistent with the baraita in Babli 90a.

17. For the mutation of sibilants Sameh & Saddik cf. Segal, Grammar of Mishnaic Hebrew, p. 33; Heising OLZ X, 1907, p. 467ff. D. H. Muller, Zur Geschichte der semitischen Zischlaute VIIth Orientalish Congress, Vienna, 1888, p. 229ff, and Friedlaender, JQR, XV. 103.

## CHAPTER X

Ch. X 1 is practically a repetition of M. VII 3, as was already noted by the Tosafot (Shab. 90b s. v. **המצניע**). While M. VII 3 expresses the principle in general terms, M. X 1<sup>1</sup> mentions three cases to which it applies.

M. X 2-5 contains general principles in regard to the prohibition of work on the Sabbath, with special reference to carrying. M. 2 states the principle that one violates the law against carrying only in case the act is performed without pausing for an interval,<sup>1a</sup> and (M. 3) in case the object is carried in the usual manner (**כדרך המוציאין**).

M. 4a takes up the question of intention in regard to work forbidden on the Sabbath. According to the old halakah, one did not break the Sabbath law against carrying, even if one planned to convey an object in the customary fashion, but by some inadvertence he actually transported it in an irregular way, **המתכוין להוציא לפניו ובא לו לאחריו פטור**. The second statement, **לאחריו ובא לו פטור** does not represent the ancient ruling on this point, for it is in contradiction with it. This was already noticed by the Amora, R. Elazar, who correctly remarks **תברא מי שנה זה לא שנה זו** (Shab. 92b). From the T. IX 8b<sup>2</sup>, too, we learn that M. 4b is in reality the view of R. Judah, who holds that one is guilty of infringing the Sabbath law, even if he committed an unlawful act without premeditation, whereas the sages clung to the old halakah on this point, and therefore disagreed with

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1. **זרע** and **רפואה** are discussed in M. IX.7, and T. VIII, 31, 33, whereas **לונמא** only in T. IX 7,

1a. Cf. the dissenting view of Ben Azzai in Y. Shab. I 1.

2. Cf. baraita Babli 92b, which is corrupt, and is to be corrected according to the T., as R. Elijah of Vilna suggested.

this statement of the M.<sup>3</sup> Furthermore, the argument employed by R. Judah to win over his opponents to his view would seem to corroborate this view.<sup>4</sup> R. Judah seeks to confirm his opinion by deriving an analogy from the law *נתכוין להוציא לאחריו ובא לו לאחריו*, which in itself is merely an inference from the first clause of the M.<sup>5</sup> *המתכוין להוציא לפניו ובא לו לאחריו*. It is strange that R. Judah doesn't cite the statement of the M. *לאחריו ובא לו לפניו חייב*, which corresponds to his view. Hence, it is clear that R. Judah did not know of this remark. The compiler of the M., who held a rigorous view in regard to the desecration of the law against carrying, adopted R. Judah's opinion which he incorporated as an anonymous statement although it was consistent with the first.

M. 5a lays down the law concerning two persons who performed together a prohibited labor on the Sabbath. The old halakah on this point simply read, "If one carried something<sup>6</sup> into a public domain, he is guilty; if it were carried by two persons,<sup>7</sup> neither is liable." From the brief formulation of the law it is not clear whether it referred to an act of transportation by two persons, which each could have performed alone, or one which required the combined efforts of two. Hence the later tannaim disagree on this point. R. Judah, whose opinion is given anonymously in the M. holds that in the latter instance they are both liable, whereas R. Shimon declares them both guiltless.<sup>8</sup>

3. As is implied in T. IX 3, *אם נתכוין להוציא בפונדתו ופיה למטה והוציא בפונדתו ופיה למעלה ר' יהודה מחייב (והכמים פוטרם)*, which corresponds to *לפניו ובא לו לאחריו*. The words in parenthesis are to be added, since they are found in the parallel baraita in Babli, as R. Elijah of Vilna conjectured.

4. *אין אתם מודים במתכוין להוציא לפניו ובא לו לאחריו שהוא פטור ואם נתכוין להוציא לאחרין שהוא חייב*

5. Cf. Raba's statement, Babli 92b *דיוקא דמתניתין קשיא* *המתכוין להוציא לפניו ובא לו לאחריו פטור הא לאחריו ובא לו לאחרין חייב*.

6. The old halakah did not read *ככר*, as is evident from the statement *לא יכול אחר להוציא*.

7. This law in turn goes back to a still older legal principle, which exempts two persons from punishment, if they committed together a prohibited act, *יחיד שעשאה חייב שנים ששאוהו פטורים*, Sifra to Lev. V, 17 (ed. Weiss 21d) and parallel passages. In the Sifra this principle is further applied to the performance of four different prohibited labors on the Sabbath, and in M. Shab. XIII 6, it is applied to the law prohibiting hunting on the Sabbath.

8. Cf. T. IX 10, Sifra 21d, Shab. 93a.

M. 6 seems to interrupt the discussion of the laws of carrying on the Sabbath, which are resumed in Ch. XI. However, as may be inferred from T. IX, 11-12 which discuss a great many of the prohibited labors at this juncture, M. 5 originally concluded the exposition of laws of carrying, and the M. resumed the analysis of the other works interdicted on the Sabbath. Ch. XI was originally not found in the present context, it seems to belong to the same source as T. I, 1-6. Then why did the compiler introduce Ch. XI here? It seems that he was influenced by the sequence in the baraita in Babli 49b, which reads אין חייבין אלא על מלאכה שביצא בה היתה במשכן הם זרעו ואתם לא תזרעו הם קצרו ואתם לא תקצרו הם העלו את הקרשים מרקע לעגלה ואתם לא תוציאו Similarly, in the M., after discussing תולש = קוצר<sup>9</sup> it continues with הזורק. Note especially in M. XI, 2 שכן היתה עבורת הליום שתי עגלות זו אחר זו ברה"ר מושיטין הקרשים מזו לזו אבל לא זורקין.

However, before M. 6 began discussing the various forbidden labors it enumerated a number of works, which are biblically forbidden, but do not entail capital punishment (אסורים משום שבות)<sup>10</sup> After M. X, 6 followed originally M. XII, 2, as is evident from T. IX 4, and 17.

## TOSEFTA

T. IX, 8-22, which corresponds to M. Ch. X, is not a unit, but is derived from different sources.

(1) T. 8-13 emanates from one source and comments upon M. 1-6a. (2) T. 14-22 contains a number of explanations of various forbidden labors, of which one is mentioned in M. 6b, namely התולש. This section, too, is derived from two sources: (a) T. 14-16, which discuss תולש and מזור and (b) T. 17-22, which explain a great many other forbidden labors. This will

9. That קוצר = תולש is evident from T. IX 17c, where several works are enumerated as derivatives of תולש, whereas in the parallel baraita in Babli 73b, and Yer. VII 2, they are considered as derivatives of קוצר cf. also T. IX 14, where תולש is used.

10. Cf. Zuckerman, Ges. Aufsätze 1, 2, p. 103, n. 3, and 261, note 1.

explain why תולש is discussed in two different places in the T., and why T. 21-22 is not mentioned after T. 13. As was pointed out above in regard to the M., the T., too, after concluding the exposition of the laws of carrying, takes up several labors which are prohibited משום שבות, and then proceeds to give details concerning the other thirty-nine labors.

There is a marked difference between T. 14-16, and 17-21. The former treats of the application of general rules to the law of תולש and מזור such as the necessity of performing the work in the usual manner and the question of purpose and intention, principles which are outlined in M. X in connection with the laws concerning carrying. T. 17-21, on the other hand, gives other details in regard to a number of works enumerated in M. VII 2. The T. here elucidates these works in a different order than that found in the M., but it is difficult to tell whether this implies a different sequence, or is due to some confusion. Thus, T. 17-18 indicate what are the derivatives of digging, threshing, plucking and washing.

T. 21-22 contains three laws concerning the sucking of milk, which were introduced at this juncture as a comment upon החוליב, which was one of the forbidden works according to R. Eliezer (T. IX, 13). In T. 21 there is a difference of opinion whether one may suck milk from a ritually clean animal on the Sabbath and festivals. The first Tanna prohibited it, whereas Abba Saul said that the custom was to allow it on the festival only. In T. 22, it is stated that a woman may not ease<sup>11</sup> herself by secreting her milk into a cup or dish and nurse her child. Furthermore, a child may not suck<sup>12</sup> from a pagan nurse, nor from a ritually unclean animal, except in the case of danger.

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11. Our text of the Tosef. reads לֹא תִקַּל; however, the Shibbole ha-Leket, 123 (ed. Buber, p. 95) reads לֹא תִקְלָח. This statement seems to contradict the view in Babli 144b, which permits one to draw milk from a goat directly into a prepared dish, but not into a plate.

12. David Pardo's view that the words אֵין יוֹנְקִין signify that an adult may not drink the milk of a Gentile woman (which he considers a rabbinical prohibition) is not justified for then the Tosef should have read חֵלֶב הַנְּכָרִית אִסּוּר.



This last statement that an infant may not nourish at the breast of a Gentile woman represents the older halakah, going back most likely to a time when it was most advisable and feasible to restrict intercourse between Jew and heathen.<sup>13</sup> A trace of the older custom is betrayed in the Agadic remark in Sotah 12b that the infant Moses refused to take food from the Egyptian nurses.<sup>14</sup> For, according to the later halakah, it is proper for a non-Jewish woman to nurse a Jewish infant.<sup>15</sup>

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13. Cf., however, Isaiah, XLIX 23.

14. So also Josephus, *Antiq.* II 9, 5, and *Shemot Rabbah* to II 7.

15. *M. Abodah Zarah*, II 1, *T. III* 3, *Yer.* II 40c, *T. Niddah* II 5, *Yebamot* 114a, *Ketubot* 60a. R. Elijah of Vilna, who understood *Tosefta Shabbat* correctly, endeavored to reconcile it with the baraita, cf. his notes to *Yoreh Deah* 154.

## CHAPTER XI

Ch. XI which deals mainly with laws of זריקה is a digression. The reason why it follows M. X, 6b which discusses התולש, was given above. There seems to have been a difference of opinion as to whether זריקה was one of the principal labors or merely a derivative, from M. XI, 2 שכך היתה עבודת הלויים it would appear that it was an אב מלאכה, and so did R. Judah regard it. Several explanations are given why it is not explicitly mentioned with the thirty-nine labors.<sup>1</sup> On the other hand, from T. Shab. I, 3 אחד המוציא והמכניס המושיט והזורק, one would infer that הזורק was considered a derivative. This was also the view of the amoraim, cf. Babli 96b, Yer. XI, 1.

Every passage in Chap. XI of the M. speaks of הזורק, except M. 2a, which mentions מושיט וזורק; M. 2b, beginning with the words נוטל ונותן חוליות הבור, where the expression נוטל is employed, and M. 5, where the phrase מטלטלין מזו לזו is used. M. 1a contains the old halakah, earlier than the time of R. Akiba; as is evident from M. 1b, where he differs with the sages over the law concerning the throwing of an object from one private domain to another via a public domain. M. 2b הנוטל מהן והנותן ... חוליות הבור would seem to be out of place in this chapter, which deals almost exclusively with the laws about throwing objects on the Sabbath. However, this M. presupposes T. 4, which reads תל . . . הנוטל ממנו והנותן על גביו.

It is strange that M. 3a speaks of כזורק בארץ and כזורק באויר, instead of simply saying פטור or חייב, inasmuch as no previous allusion is made in regard to throwing an object into the air, or along the ground. As a matter of fact, the law about זורק בארץ actually follows in M. 3b.

In M. 5 the statement about carrying in a boat is mentioned because of the previous remark about throwing an object from a boat into the sea.

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1. Cf. Yer. Shab. VII, 2 where it is also stated that זריקה is the only chief labor that has no derivatives, see also Yer. XI 1.

M. 6a represents the view of the sages. Rabbi's dissenting opinion is cited in T. X 19.

### TOSEFTA

T. X corresponds to M. XI. With the exception of one passage, the T. presupposes the same order as the M. Thus, T. IX, 8 חוליות הבור is undoubtedly a comment upon M. 2a שתי עגלות. Thus, the sequence in the M. would be 2b חוליות הבור and then 2a שתי עגלות. T. 2b is out of place and is repeated in paragraph 13.

T. 1-3 supplement M. I. In T. 2 בקעה is considered a כרמלית, as in T. 1, 4 and M. Er. 1, 8.

T. 4-7 elaborate M. 2b, which mentions חוליות הבור. In these four paragraphs the phrase הנוטל ממנה ונותן is used, as well as in the M. Worthy of note, however, is the fact that the parallel baraitot in Yer. I, 1, 2d) employ the term המשתמש, whereas the parallel statements in the Babli (cf. 101a, 8a, 5a), use the expression זרק.

T. 9-10 explain M. 3. It seems that T. 10b קופה ברה"ר is out of place and was originally after T. 9.

As to T. 11, it is not clear whether the compiler intended it as a supplementary remark to M. 4, or whether it was brought in because it contains the phrase נבונה עשרה טפחים, as do T. 10 and 12, cf. also the baraita in Babli 99a, where a similar statement is found in connection with בור וחוליתו,

T. 12-18 repeats M. 5 with many amplifications. It should be noted that T. 18 is not concerned with the question of carrying; it appears that it was inserted here because of the phrase בפלע או בספינה<sup>2</sup>

T. 19 repeats M. 6 with some additional remarks. The statement אם יש בשגגה של אחר מהם כדי לעשות מלאכה חייב, which is not found in the parallel baraita in Babli 69a, is not quite clear, cf. Schwartz, Tosifta Shabbat, p. 68.

2. This statement is not cited elsewhere in Talmudic literature; cf. also Pardo who correctly remarks that we may infer from this passage that one may take טבילה in a river, in opposition to the Magen Abraham, 326.

## CHAPTER XII

After the digression on the laws of זריקה, Ch. XII resumes the discussion of the sundry labors begun in M. X, 6. As is evident from T. IX, 16-17, M. XII, 2 originally preceded M. 1.

An analysis of M. Ch. XII-XIV will show that these chapters are derived from another source than M. VII, 2, where the thirty-nine works are listed. Thus in M. XII, 1 two chief works are enumerated: (1) בונה and (2) מסתת, whereas מכה בפטיש and קורה are considered as derivatives. This may be inferred from the wording of the M. הבונה כל שהוא המסתת והמכה בפטיש ובמעצר, where the phrase כל שהוא, where the phrase מסתת is not mentioned at all (but מכה בפטיש is specified), whereas מכה בפטיש is actually counted as one of the thirty-nine labors. There can be no doubt then that this passage presupposes a different enumeration. The amoraim, too, seemed to have felt that there was a contradiction between M. XII, 1 and VII, 2, for we read in Babli 102b מאי משום מסתת רב אמר משום בונה ושמואל אמר משום מכה בפטיש<sup>1</sup>. However, the views of both Rab and Samuel are forced. For if מסתת is a derivative of בונה, as Rab maintained, then the M. should have read הבונה והמסתת כל שהוא; on the other hand, if it belongs to the category of מכה בפטיש, then the M. should have been formulated המכה בפטיש והמסתת, as R. Nathan b. Hoshayah already observed. That<sup>2</sup> מכה בפטיש was not originally enumerated as one of the thirty-nine works even in M. VII, 2 seems to be indicated by the fact that there it follows הבונה והסותר, instead of המכבה והמבעיר, which it should more logically follow.

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1. A similar view to Samuel's is held by R. Joshua b. Levi in Babli 75b.

2. T. XI 2-3, however, considers not only מכה בפטיש, but also קורה as chief works.

In M. XII, 1 the view of R. Sh. b. G. in regard to מכה בקורנס should logically precede the statement וזה הכלל, as it is a comment upon מכה בפטיש. This order is also presupposed in T. XI 2. The statement of R. Sh. b. G. in the M. אף המכה בקורנס. על הסדן<sup>3</sup> בשעת מלאכה חייב מפני שהוא כמתקן מלאכה is not quite clear. The expression כמתקן מלאכה<sup>4</sup> is rather unusual. In the Babli 103a Rabbah and R. Joseph explain it מפני שמאמן את ידו and hence understood the phrase to mean "because he prepares himself for the work." However, it is more likely that the M. originally read simply כמתקן,<sup>5</sup> and the meaning is that he makes the hammer fit, i. e., the smith would strike the hammer on the anvil in order to remove the irregularities from its surface so as not to injure the thin metal plate when he comes to beat it, (cf, Rashi to Babli, 103a s. v. עושין כן). This interpretation would be more in harmony with T. XI, 2.<sup>6</sup>

M. 2, as was pointed out above, originally followed M. X, 6, but was inserted here because of the phrase אם לתקן, since M. 1 speaks of כמתקן. However, it is to be noted that in M. 2, as well as in T. IX 15-16 לתקן is used in a different sense, namely, "to improve."

M. 3-6 explains what constitutes a violation of the law prohibiting writing and what does not. In the T. the matter is treated from a different angle. M. 3 is to be understood as follows: he who writes two letters, whether they form part of one word<sup>7</sup>

3. Cf. Krauss, *Archaeologie* II, 656.

4. This phrase is found once more in the Mishnah, B.M. X. 5, and strangely enough, it is used by R. Sh. b. G., but there it has a different meaning.

5. Cf. T. V 10, where it is prohibited to break off a piece of spruce wood in order to use it as a tooth-pick or key because that makes it fit for use כמתקן. It seems that the passage in Maimonides, הלכות שבת XXIII 4 חייב שיתקן דבר באיזה דבר שיתקן is derived from T. XI 2.

6. Incidentally, it may be remarked that Rabbah and R. Zera, who held מכה בפטיש משום מכה מלאכה חייב נמר מלאכה חייב, must have known of T. XI 2, for M. XII 1 doesn't speak of מלאכה, cf also Yer. VII 2 משום מכה בפטיש מסמוך עברוניה משום מכה בפטיש.

7. Rashi's interpretation of משם אחר that he wrote two identical letters is incorrect; he seems to have been influenced by the baraita in Babli 103b, but there we read והן שם אחר.

(in which case the syllable might happen to be a word in itself), or of two words<sup>8</sup> (in which case the two letters might not form a word), he is guilty.

R. Yose held that if one wrote two letters, whether they composed a word or not, he is guilty because the law interdicting writing intended even to include the making of marks. In the Babli 103a (Sifra 16b) and T. XI, 6, a similar view is attributed to R. Yose, namely, that the mere making of one mark on two boards for the purpose of indentifying them is prohibited.

En passant, it may be pointed out that the text of the baraita presents some difficulty. It reads as follows: ועשה אחת יכול עד שיכתוב כל השם . . . ת"ל מאחת אי מאחת יכול אפילו לא כתב אלא אות אחת . . . ת"ל אחת (9) הא כיצד אינו חייב עד שיכתוב שם קטן משם גדול.

We would expect the baraita to read הא כיצד אינו חייב עד שיכתוב שתי אותיות אפילו שם קטן וכו'. This seems to us to have been the original reading. The view of R. Judah also is more correctly transmitted in the Yer. (XII, 3), where we read כתב שני אותות שוים והן שם חייב.

To sum up, the old halakah merely read הכותב שתי אותיות. Later Tannaim differed as to the interpretation of this statement. Some, e. g. R. Judah and Rabbi held that the two letters had to have a meaning, even if they formed part of a larger word. While others, e. g. R. Yose maintained that any two letters that were written regardless of the fact, whether they constituted a word or not, were prohibited.

The laws forbidding writing are divided into groups. M. 3-4 explains which acts are considered a trespass of the law, and M. 5-6 which are not, but the details are not discussed in the same order in both groups. Thus, M. 3a בין כימינו בין בשמאלו corresponds

8. The phrase בין משם אחד בין משני שמות is found also in M. Kinnim I. 3, but there it has a different meaning.

9. A like baraita l. c., which presents the view of R. Shimon, reads הא כיצד אינו חייב עד שיעשה מלאכה שכיוצא בו מתקיימת (cf. M. 12, 5). It is not clear how this applies to כותב for the Tanna is seeking a rule midway between writing the whole word and one letter. It would, of course, apply to weaving, which is mentioned in the same context.

to M. 4b לאחר ידו; M. 3c מצינו שם קטן (where the law of intention is involved) corresponds to M. 5e נכתוין לכתוב חית; M. 4a בהעלם אחר = M. 6; M. 4b כתב בדיו corresponds to M. 5b = כתב במשקין; M. 4c כותלי זווית = M. 5f על ב' כותלי הבית. On the other hand, some laws specified in M. 4 find no corresponding application at all in M. 5.

## TOSEFTA

T. XI corresponds to M. XII. The principal differences between the two in this chapter are the following: M. 2 is not discussed in this ch., whereas T. 4-5 takes up מכבה ומבעיר, which is not mentioned in the M. in this context. T. 1-3 supplement M. 1. Whereas T. 1-2 discuss certain works which are prohibited no matter how little a part of them is performed (כל שהוא); other works are not forbidden unless they are brought to completion T. 3 mentions four such works,<sup>10</sup> two of which are not enumerated in the list of thirty-nine labors.

T. 5 discusses the prohibition of kindling and extinguishing lights, with regard to the principle of intention, and with reference to an instance where the act is performed by more than one person at a time, cf. M. X, 4-5, where these points are outlined in connection with the law against carrying.

T. 6-18 elaborate the law found in M. 3-6 against writing. T. 6 refers to M. 3, whereas 7-18 comment upon M. 4-6. While the M., as was pointed out above, deals first with cases that constitute a violation of the law against writing and then with those that are not, in the T. this classification is disregarded and new laws are introduced, not alluded to in the M. The passages of the M. are discussed in the following order in the T. 4c, 4b-5a, 4c, 5a, 4e, 6. Most likely T. 6b is out of place and belongs after T. 18.

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10. From Babli 103a and Yer. XII. 1, it is clear that this is only the view of R. Shimon.

## CHAPTER XIII

Ch. XIII begins the discussion with regulations concerning weaving. Why does the M. state these laws just after those about writing, contrary to the order in M. VII, 3? The answer is that the compiler is adhering to a sequence he found in an old Midrashic source. Thus, in Sifra (ed. Weiss 16b)<sup>1</sup> we read יכול עד שיכתוב את כל השם עד שיארג את כל הבגד עד שיעשה את כל הנפה. Here we see the explanation of the fact that אורג follows כותב and הנפה. אורג follows העושה שתי בתי נירין ... בנפה<sup>2</sup> and the order is reversed.

The reason why M. XII ff. does not discuss the thirty-nine works in the order enumerated in M. VII, 3 is that these explanatory texts are taken from various sources, most of which probably did not even know of the list of thirty-nine works incorporated in M. VII, 3. There can be no doubt that there was no serious attempt on the part of the compiler of the M. to comment upon M. VII, 3 in proper order, for he was more influenced by the arrangement of sources whence he drew his information. Unfortunately, the tannaitic statements, which served as his primary sources, are no longer extant.

M. XIII, 1 presents a difference of opinion between R. Eliezer and the sages over the old halakah, which simply read האורג. M. VII, 3 and XIII, 4 presuppose the view of the sages. From the phrase in M. 3 שיעורו כמתקן it is evident that repairing (מתקן) a broken object on the Sabbath was one of the thirty-nine prohibited works.

M. 5-7, which lay down several laws with regard to hunting,<sup>3</sup> emanated from a different source than M. X 5, which discusses the question if two perform a prohibited work on the Sabbath. It is

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1. Cf. also Shab. 103b, 104b, and Mekilta di R. Shimon, p. 165.

2. Cf. M. Bezah III. 1, where R. Shimon's view is cited, and R. E. J. 17:146-149.



not likely that the Tanna would repeat the same legal principle in explaining the various works. It seems more probable that one Tanna expounded several legal principles in connection with one work, while another authority did the same in connection with another labor. Thus we find the same legal principles enumerated in M. X, 3-5, XII, 3, 5, XIII, 6-7, T. IX, 14, X, 19, XI, 17-19.

M. 5 defines what constitutes the act of hunting<sup>2</sup>; whereas M. 6-7 discuss various details concerning the law where two people participate in hunting a bird or an animal.

### TOSEFTA

T. XII, 1-7 corresponds to M. XIII. T. XII. 1 comments upon M. 1. The phrase line 17-18 *והאורג שלשה חוטין בתחילה הרי זה חייב* line 17, is out of place and should follow the words *אפילו אחד* line 17, as is evident from the parallel baraita in Babli 105a. The same sentence repeated in line 19, is a later gloss and should be omitted.

T. 2-7, which deal with the law about hunting, are derived from two sources: (1) T. 2-5 and (2) T. 6-7; both of these groups treating of the law of hunting, presuppose a different sequence in the M. Thus, T. 2-3 and 6 state the law in regard to cases where two persons jointly hunt an animal. T. 4-5 and 7<sup>3</sup> determine what constitutes a violation of the law of hunting. Thus the first group, T. 2-5 comment upon the M. in the following order: M. XIII 6, 5, XIV, 1,<sup>4</sup> whereas T. 6-7 comment upon M. 7 and 5. While the M. has undoubtedly the more logical arrangement, it is clear the both groups of the T. passages presuppose a reverse sequence.<sup>5</sup>

3. T. 7 is a comment upon M. 5 and not M. 7, in spite of the fact that it contains the phrase *הא למה זה דומה* in common with the M.

4. T. 4b-5a, which speak of *זבובין ויתושים* contradict M. XIV 1, which makes a distinction between *לצורך* and *שלא לצורך*.

5. Note also that M. X, 2-5 first defines what constitutes a violation of the law against carrying, and then states the law concerning the act performed jointly by two persons.

## CHAPTER XIV

M. XIV<sup>1</sup> continues the discussion about hunting, but is derived from a different source than M. XIII, 5-7. Note that ה ח ו ב ל is considered here and in T. VIII, 4 and M. B. K. XIII, 5, as one of the thirty-nine works, though it is not mentioned in M. VII, 3.

After the exposition of the laws about hunting, we should expect the laws about tying, found in Ch. XV. The M. has introduced at this juncture rabbinical regulations concerning the use of remedies and medicines on the Sabbath. The explanation of this digression is found in the fact that originally the first paragraph of this chapter read ה צ ד נ ח ש ב ש ב ת א מ מ ת ע ס ק ש ל א י ש כ נ ו פ ט ו ר ו א מ ל ר פ ו א ה ח י י ב . The words א מ ל ר פ ו א ה prompted the compiler to subjoin M. 2-4. At a later stage in the redaction of the M., when the wording of the M. was changed<sup>2</sup>, the transition from M. 1 to M. 2-4 became obscure. The T. presupposes also M. 4 to have preceded M. 3.<sup>3</sup> The statement in M. 3, which prohibits drinking מ י ד ק ל י מ ו כ ו מ ע י ק ר י נ , represents the old halakah antedating the time of R. Akiba, whereas T. 13, which allows the use of these medicinal preparations for beverage purposes, is in accordance with the view of R. Akiba. This may be inferred from T. Moed Katan II, 10, where it is explicitly stated that the earlier prohibition of these liquids on Hol ha-Moed was abolished by R. Akiba. Undoubtedly, a similar development took place in regard to the law concerning the use of these drinks on the Sabbath. It is interesting to note that the anonymous Mishnah does not accept the view of R. Akiba, but that the T. does.

1. This statement is now incorporated in M. Eduyot II 5.

2. It seems that the later compiler wished to express the law in more general terms, hence ל צ ו ר ך was substituted for ל ר פ ו א ה and ש א ר ש ק צ י מ ו ר מ ש י מ and א מ מ ת ע ס ק ש ל א י ש כ נ ו נ ח ש for ש ל א ל צ ו ר ך .

3. For T. 9 comments upon M. 4, and T. 13 upon M. 3.

In M. 4 it is stated that only princes, (בני מלכים)<sup>4</sup> may apply the ointment of roses to wounds on the Sabbath. R. Shimon objects to class distinctions on the ground that כל ישראל בני שרים הם, cf. M. B. K. VIII, 6, where R. Akiba<sup>5</sup> held that even the most indigent in Israel should be treated like the wealthy in regard to the law concerning insult, because they are all descendants of Abraham, Isaac and Jacob.<sup>6</sup> R. Mathya, too, in B. M. VII. 1, demanded favored treatment for ordinary laborers for the same reason.

### TOSEFTA

T. XII, 8-14b corresponds to M. XIV. The two passages in T. 8, which speak of שמתכוין בזמן are closely connected with the preceding remark of T. 7, which contains the similar word שמתכוין. T. 9 is a literal repetition of M. 4a, with the exception that it changed the phrase ואינו חושש to ואם נתרפא נתרפא. It seems that the T. is derived from the same source as M. XXII, 6. T. 9-11,<sup>7</sup> which are joined by the common word ההחושש, are found in T. Terumot IX, 11, 12, 14.

T. 12, אין טורפין יין ושמן, is presupposed in M. XIX 2. The two statements in T. 13b, which have the similar phrase בזמן שמתכוין לרפואה, are most likely derived from the same source as T. 8, where the same phrase is used. T. 14<sup>8</sup> is actually a continuation of T. 12.

To sum up, T. 8-14 is not a unit, but is derived from two sources. T. 8-12 from one source, T. 13-14 from another. This fact will account for the lack of logical arrangement in this ch. of the T.

4. Cf. M. Shabbat VI 9. Princes may wear bells on the Sabbath, and ordinary folk as well; the sages mentioned the former, for it is customary for them to wear them.

5. In B.K. 86a this view is accepted by R. Meir also.

6. R. Shimon, however, in this case, held that the law should make a difference between poor and rich.

7. T. 9 is also found in T. Shebiit VI. 3, cf. also M. Yoma VIII 6, where a different view is given in regard to החושש בגרוננו.

8. T. 14c נותנין מים לתוך קמח קלי is actually a comment upon M. XXIV 3, but the statement was inserted here because of the preceding phrase לא יתן מים.

## CHAPTER XV

This chapter takes up the law concerning tying. M. 1 explains what knots are forbidden and M. 2 which ones are permitted. From the statement in M. 1 *היתרן על הוא חייב כך קשורן* it appears that the enumeration of the thirty-nine labors did not include *מתיר*, otherwise this remark would be superfluous.

M. 3, which permits the folding of garments on the Sabbath, and the making of beds on Friday evening for the Sabbath day, is not directly connected with the preceding.<sup>1</sup> A difference sequence is presupposed by the Tosefta. It seems that M. XVII, 7, *פקק החלון רבי אליעזר אומר בזמן שהוא קשור ותלוי פוסקין בו* preceded M. XV, 1. For T. XII, 14<sup>2</sup> *ומודים חכמים ל"ר אליעזר* is undoubtedly a comment upon his Mishnah.<sup>3</sup> Why was M. XVII, 7 inserted before the M., beginning *אלו קשרים*? It is most likely due to the fact that the Mishnah, presupposed by the Tosefta, followed the order in M. Shab. end, which reads *ומדבריהם למדנו שפוסקין* and *קושרין בשבת* where the statement about *פוסקין* precedes that about *קושרין*. The order of the M. for this chapter as presupposed 3b, by the T. is as follows: M. 1a *אלו קשרין . . . על היתרן* 2a *אמר ר' יהודה . . . אין חייבין* 2d *יש לך קשרים . . . של בשר* 2c *קושרין דלי ר' מאיר אומר . . . אין חייבין עליו מקפלים את הכלים* 3a, *מציעין את המטות*.

1. Cf. *תוספות יום טוב* ad loc., who tries to explain the connection.

2. This statement is found literally also in T. Suk. I 8, but there it is cited because of *פורס עליה סדין*.

3. This is evident not only from Shab. 125b, but also from Erubin 44a, where it is explicitly stated *והא אתמר עלה*.

## TOSEFTA

T. XII, 14f-16 correspond to M. Ch. XIV.

In T. 14g, the statement concerning the putting together a candlestick was brought in because it was considered as coming under the category of "tying." In the Talmud it was classified as "building," cf. Babli 47a, Yer. XII, 1 and Deut R. III, 1.

T. 15, שלא יחזיר . . . הרגין stringing together fish or locusts (read גובאי, instead of גבינין, as R. David Pardo suggested) belongs to the category of tying.

T. 15c, וזה הכלל, which explains what constitutes a permanent knot, combines into one the views of R. Meir and R. Judah.

T. 16a is very similar phraseology to T. III, 19, and it seems that both passages are derived from the same source. The question of handling a rope on the Sabbath is here mentioned merely en passant. It is curious that in the Babli 113a we find the statement of Samuel, בלי קיואי מותר למלטו בשבת, in a chapter dealing with the laws of קושר, following immediately upon the baraita חבל שבאבוס קושרו בפרה Rashi already felt that the connection was not quite smooth, for he says איירי דאיירי בחבל דגורדי נקט לה הני. It does not seem to be purely accidental that T. 15-16 discusses the tying and handling of rope in one paragraph, and that the Talmud treats the question of the tying of rope and the handling of the weavers' implements in one context. Perhaps Samuel's statement was derived from a baraita where both statements were found in one context.

T. 16b, which presupposes a different sequence from that found in the M., preserves the same order as that found in Mekilta di R. Shimon, p. 108.

## CHAPTER XVI

Ch. XVI explains the laws concerning extinguishing a fire. M. 1-4 prescribe what may be saved from a fire, even though it involves a transgression of the law against carrying. All the statements in this group commence with the word **מצילין**, except the first one, which reads **כל כתבי הקדש מצילין**. Perhaps this passage emanates from a different source.

M. 5 and 7a prescribe the manner in which it is permitted to prevent a fire from spreading. It seems that originally M. 7a followed immediately upon M. 5, cf the similar phrase in M. 5 **שאחו** and **תאחו** in M. 7; M. 6 and 8 inform us that a Gentile may put out or kindle a fire, but should not be instructed to do so. Furthermore, if a Gentile kindled a light on the Sabbath for his own benefit, a Jew may make use of it. M. 8b enumerates two other similar principles. One may assume that originally M. 8 followed immediately upon M. 6. From Tosef. XIII, 10-14 it appears that there was a slight change in sequence, namely that the statement **מילא מים להשקות** preceded **עשה נכרי כבש**.

## TOSEFTA

T. XIII 1-14 corresponds to M. XVI. T. 1-6a comment upon and elaborate Mishnah 1. The statement in M. 1 **ומפני מה אין קורין בהם** was not part of the original Mishnah.<sup>1</sup> Hence, the later Tannaim differed as to the reason why it was forbidden to read Scriptures on Saturday afternoons. In T. 1 R. Nehemiah gives a different reason from the one found in the Mishnah.

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1. Cf. Geiger, *Jud. Zeit.* V. 98, Bruell, *Bet Talmud*, Vol. IV.

T. 2-3 explain M. 1 וַאֲעִ"פּ שְׂכָתוּבִין בְּכָל לִשׁוֹן. T. 4-5 take up new points not mentioned in the M., namely the law in regard to saving from fire scriptures written with other materials than ink, prayer books (cf. Marx, *Siddur R. Amram*, p. 3, note 1) and heretical writings.

T. 5, l. 13-14 and T. 6a are derived from the same source as is evident from the common phrases, אַחֲזוּ הָאוּר and וְאֵם כְּבֵה כְּבֵה. These three statements are brought in at this juncture because the first statement deals with a book that caught on fire.

T. 6b-8a supplement M. 2, which explains the law concerning the rescue of foodstuffs from a conflagration. In the M. it is not quite clear just why the law concerning protecting food from fire is taken up after the regulation about rescuing Scriptures. However, in the Tosefta the transition has been preserved. In T. 6b we read מַכְבִּין לְהַצִּיל בְּכַתְבֵי הַקֹּדֶשׁ אֲבָל לֹא בְּתַרומָה, which leads to the discussion of saving various kinds of foods.

T. 7b, which contains the law concerning the deliverance of a corpse from a fire, is distinctly out of place, as it is injected in the midst of the discussion concerning food.

T. 8b-9 are literal repetitions of M. 5a and 6a respectively, with some additions.

T. 10-14 amplify M. 8, which presupposes the principle that a Jew must not use anything done specifically for him on the Sabbath by a heathen.<sup>2</sup> If the heathen made something for himself the Jew may use it. Three illustrations are given of this law: (1) the kindling of a light by the Gentile, (2) the drawing of water to give his cattle to drink, (3) and the making of a landing bridge to disembark. In T. 10-14 two of these points are dealt with, namely the second and third, but are taken up in reverse order.<sup>3</sup> T. 10-13 are connected with the statement עֲשֵׂה נְוִי כֶבֶשׂ and T. 14 with מִיֵּלָא מֵיָם. Inasmuch as the Mishnah touched upon the question of disembarking from a boat on the Sabbath, the T.

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2. This is a corollary from the principle found in Mekilta Bo. ed. Friedmann, p. 9b.

3. In the textus receptus of the T., paragraphs 12, 13 and 14 precede 10, but the sequence in the Erfurt MS. seems to be original.

set forth the law concerning sailing on a boat on the Sabbath. T. 10 explains when one may embark on a boat; T. 11a, under what conditions one may disembark on the Sabbath, (cf. M. Erubin IV, 2). T. 11b touches upon the point in our M., namely the use of a gang-plank improvised by a Gentile on the Sabbath. T. 12-13 forbids a Jew to make a transaction or contract with a Gentile on Friday, that will involve the latter's working for the Jew on the Sabbath. The same principle underlies the law in T. 10, which prohibits the Jew to embark on a boat on Friday, as it may require the Gentile to work on the Sabbath for the Jew. T. 14 repeats the M. with an additional illustration.



## CHAPTER XVII

It seems that not only the law against carrying, but also the ordinance forbidding the handling of vessels on the Sabbath was very strict during the Second Commonwealth. For, according to an ancient tradition,<sup>1</sup> the older halakah originally permitted only the handling of three kinds of vessels. In the course of time, the law became more and more lenient, until all vessels were allowed, with the exception of two. This view was not accepted by the compiler of the Mishnah, who enumerates in M. XVII, 2-3 a number of utensils that may be handled on the Sabbath. Originally, this chapter began with paragraph two, which specified the articles that could be taken into one's hand. The corresponding rules are found in T. XIII, 15-17. Then followed M. 4, which is obviously an excerpt from a fuller text.

In view of T. XIV, 1, where R. Yose says *אף צפורן גדולה*, it seems that our M. is incorrect in ascribing to him the opinion that all vessels but two may be handled. The difference of opinion between the Tanna Kamma and R. Nehemiah in M. 4, in regard to the circumstances permitting handling is the same that existed in the schools of Hillel and Shammai (T. XIV, 1, cf. also T. Bezaḥ, I, 11).

M. 1 and 5 followed M. 4, as is evident from T. XIV, 1e and 2a. Then came M. 8 and 3, *קנה של זתים אם יש קשר בראשו*,<sup>2</sup> then M. 7, *זמורה שהיא קשורה במפיה* 6b, *פסק החלון שהוא קשור*; and finally 6a. To sum up, the order of the M. that the Tosefta had is as follows: 2, 4, 1, 5, 8, 3, 7, 6. The entirely different sequence is in most instances a much better one.

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1. T. Shab. XIV 1, Babli 123b, cf. Yer. XVII 1. R. Hanina, in the latter passage, assigns this law to the epoch of Nehemiah. It is known that the Essenes did not move any utensils on the Sabbath. Hippolytus, *Refutatio Omnium Haeresium*, IX. 18-28.

2. M. 3 was originally in the treatise, *Kelim*, and was inserted here because of the statement, *בין כך ובין כך ניטל בשבת*.

## TOSEFTA

T. XIII, 15 - XIV, 3 comment upon the statements in M. XVII. It is quite clear that T. XIII, 15-17 are an explanation of M. 2, specifying certain utensils, which may be handled on the Sabbath. While T. 5 does not bear directly upon this M<sup>3</sup> because it deals with the question of putting things together (בנין), nevertheless, it found its place here because of the statement concerning יד של סכין, since in M. 2 קורדום is mentioned. T. 16-17 gives an additional list of utensils not mentioned in M. 2, which may be handled on the Sabbath. In these two paragraphs there are three statements which are mere obiter dicta and do not deal with the law concerning handling vessels, namely (1) אין מקרקשין את חזוג. Incidentally, it may be remarked that the Tosefta uses the verb מטלטל, whereas the M. has נוטל.

T. XIV, 1a comment upon M. 4, whereas 1b ומגדל שדה תיבה ומגדל explains M. 1 כל הכלים הניטלים בשבת דלתותיהם עמהן. The word להנוטלין presupposes that the law concerning the handling of utensils is known, and hence M. 1 could not originally have formed the beginning of the chapter.

T. XIV, 2-3a elaborate the law concerning broken utensils on the Sabbath expounded in M. 5; the statement ועל כסויין שאין צריך בית יד in T. 3b is found somewhat differently worded in M. 8.

T. 3c which reads אין נוטלין במוט בשבת אבל נוטלין בשנים שלשה is obviously corrupt. The copyist must have had in mind Num. XIX 23 וישאוהו במוט בשנים (cf. Sotah 34a). The T. should read ובארבעה בשלשה ונאמר במוט באחד אבל בשנים בשלשה ובארבעה.

3. This paragraph doesn't comment upon M. 1, which mentions שנתפרקו, which alludes to vessels that were taken apart, although this T. passage states the ruling concerning putting parts of utensils together; cf., however, T. XIV 1b, ולא מחזירין.

4. This is the correct reading of the M., as was pointed out in Tosafot, Shab. 122a, s. v. כל, and cf. M. 5. It is quite clear that M. 1 and 5 logically belong together, because they are similar in phraseology, and deal with a similar case.

The meaning is that one may handle a lamp or candlestick that is not too large for one person; if it requires two, three, or four, then it must not be moved. This explanation is borne out by a statement in Babli 121b מותר של בית רבי מותר cf. also Yer. XVII. 1. זירא בניטלון, בידו אחת או בשתי ידים

T. 3c קנה שהתקינו comments upon M. 3 and 7, which seemed to have been together and have the word קשר in common, whereas T. 3d משלשלין את המשלית is a supplement to M. 6. In regard to the law concerning the lifting up of an animal out of a well, cf. Mathew XII, 11.

5. פִּמּוּט might be a dialectical difference for פִּמּוּט. On the interchange of the labials cf. Wright. Comparative Grammar, p. 64. The word באחר was misread as בשבת. The second נוטלין is evidently superfluous, as it is inconsistent with the phrase הרי זה אסור.

## CHAPTER XVIII

The subject matter in M. XVIII is loosely connected. M. 1-2a continues Ch. XVII, that treats of the law concerning handling food on the Sabbath.<sup>1</sup> M. 1 permits one to move piles of straw or grain on the Sabbath, in order to make room for guests. M. 1b explains which food products may not be moved. M. 2a allows one to handle soft twigs, if they are prepared to be used as fodder.

In M. 2b the statement that one may invert a basket for chicks to ascend and descend upon involves the law concerning handling the basket. This remark led the compiler to add the law concerning the handling of other living beings.

M. 3a seems originally to have been taught in connection with the laws of festivals. The whole paragraph is rather lightly linked with the preceding. It seems, however, that since M. 2 specifies certain regulations concerning the handling of animals, the law permitting one to aid a parturient animal and a woman in travail on the Sabbath is mentioned.

The order of the Tosefta in this chapter is the same as that preserved by the Mishnah, except that in M.2 מרדין עגלין preceded כופין את הכל, as is evident from T. XV, 1. In M. 1b after מפנין תרומה מהורה, originally followed M. XXI, 1b ממלמלין תרומה כמאה, as appears from T. XIV, 5.

## TOSEFTA

T. XIV, 5 - XV, 3 correspond to M. XVIII. Thus, T. XIV, 4-9 amplify M. 1; T. 10-17 elaborate M. 2a.

T. XV, 1 supplement M. 2b, and T. XV, 2-3 explain M. 3. This chapter of the T. is not in its original form, as may be inferred

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1. Further details in regard to this law are found in M. XX, 5, XXI, 3.

from the following observations: T. XIV, 6, which is practically a repetition of M. XVII, 5, is entirely out of place in its present context. It seems to have been added as a gloss in the margin to T. 8, which contains the phrase, מטלטלין שברי זכוכית, but was misplaced by a subsequent copyist. Similarly, T. XIV. 7<sup>2</sup> originally followed T. 9, which speaks of מים שנחגלו, for it has no connection with the preceding or subsequent passages.

In regard to T. XIV, 4, beginning with the words חבילה של גמי, there is a difference in sequence between the Erfurt MS. and the *textus receptus*. In this case the latter seems to have preserved the correct order. That the statement נסרים של בית אומן is directly a comment upon M. 1 is made clear by the baraita in Shab. 49b, where a version of this T. is quoted and the following phrase is added ואם חשב לתת עליהן פת לאורחין.

T. XIV, 12-17 is a digression and does not treat at all of the questions discussed in the Mishnah at this juncture. It seems that a mere phraseological resemblance caused the compiler to introduce this passage here. Thus M. XVIII 2 uses the phrase אם התקינו למאכל בהמה, and T. XIV, 12 has the words אם הכניסן למאכל בהמה . . .

T. 12 and 13 both employ the term אמיחא. T. 13-15 have in common the expression מערב שבת, and T. 17 deals with ערב יום טוב. While verbal connections of this sort might seem far-fetched to us, they were more useful to the ancients who studied orally.<sup>3</sup> Similarly, the mention of שום in T. 15 and מלילות in T. 17, may be a result of M. Eduyot II 6, השום והבוטר והמלילות, שריסקן מבעור יום.

T. XV, 2-3 explain M. XVIII, 3. The Tosefta presupposes מסייעין instead of מסערין as is found in the M. En passant, it may be remarked that the statement אין מילדין את הבמה ביום טוב is not found in M. Bezah where it belongs. Albeck, in his *Untersuchungen ueber die Redaktion der Mishnah*, p. 36 failed to mention this passage in his list of similar statements.

2. Cf. M. Terumot VIII, 8, and Tosefta VII, 17.

3. Rosenthal, *Zusammenhang der Mishnah*, I. 1918 p. 109.

## CHAPTER XIX

Ch. XIX deals with the law of circumcision, which is one of the ceremonies that takes precedence over the Sabbath. The M. takes this law for granted.<sup>1</sup>

M. 1 states the two lenient views of R. Eliezer, who allowed the carrying<sup>2</sup> of the knife on the Sabbath, if one forgot to bring it on Friday, and during the Hadrianic persecutions<sup>3</sup> (בסכנה), he permitted the knife to be carried wrapped up. He went a step further and allowed the chopping of wood to make charcoal, in order to prepare the knife.<sup>4</sup> R. Akiba sanctioned only that kind of work, which could not have been done on Friday.

M. XIX, 2 explains the old halakah עושין כל צרכי מילה בשבת. A slightly different version of this statement is found in M. XVIII, 3.<sup>5</sup> It seems that this statement was repeated in M. XIX, 2, because of M. XIX, 1, which does not speak of צרכי מילה, but presents the view of R. Eliezer, who holds that מילה וכל מכשיריה דיוחין את השבת (Shab. 131b).

M. XIX, 3a מרחיצין את הקטן was followed, originally by M. 6, אלו הן ציצין, as we find it in the Tosefta. This is actually the better order. The statement of R. Elazar b. Azariah in M. 3b is a quotation from the Mishnahs in M. Shab. IX, 3. In the latter the reading is מרחיצין את המילה.<sup>6</sup>

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1. Cf. M. Nedarim, III, 11. In Sifra, (ed. Weiss) 58c and Shab. 134b-135a and Yer., Yeb. VIII, 1 the Biblical source is given as Lev. XII, 3, but cf. T. Shab., XV, 16.

2. Cf. Shab. 130b, where it is reported that in the time of R. Judah ha-Nasi, a decision was rendered in accordance with R. Eliezer.

3. Cf. Graetz, Geschichte, IV, 430-1; Schlatter, Die Tage Trajans, p. 5; Joel, Blicke in die Religionsgeschichte, Schuerer I, 677, note 81.

4. According to a baraita in Shab., 103a, this was the custom in R. Eliezer's place.

5. Cf. Albeck, Untersuchungen ueber die Redaktion der Mishnah, p. 41-42.

6. Cf. Kerem Hemed VIII, 164-165, Albeck l. c., p. 79 and Chajes Memorial Volume, Hebrew part, p. 17.

M. 3c and 5 state three cases where the performance of the rite of circumcision does not take place<sup>7</sup> on the Sabbath, namely (1) שמשות (2) אנדרונינום (3) נולד בין השמשות. That M. 3c was originally followed by M. 5 may be proven, not only from the Sifra (ed. Weiss 58c) and the baraita in Shab. 134b-135a, but also from the Tosefta XV, 9, which is a comment upon M. 5; whereas T. XV, 10 actually discusses M. 4.

M. 4, giving the conflicting opinions of R. Joshua and R. Elazar, represents the version of the Mishnah as taught by R. Shimon, as is evident from the T. XV, 10. In the Babli 137a and Yer. XIX, 4 R. Meir's recension of the halakah is given.

T. XV, 4-17 explains and comments upon this chapter of the M. This T. chapter may be divided into two parts: T. 4-10 supplement the matter in the chapter in the M., whereas T. 11-17 deals with the ordinance which permits the violation of the Sabbath, when human life is in peril (8) פקוח נפש. The first part comments upon every paragraph of the M., except the first, and betrays two deviations from the sequence of the M., as was noted above. In both cases, the T. preserves the better and more original order.

T. 4a מהלקטין במילה appears to be a comment upon M. 2a עושין כל צרכי מילה. It seems that the statement T. 4c כל זמן שהוא עסוק במילה, originally followed the remark מהלקטין במילה. Its present position is perplexing and difficult to explain on logical grounds. T. 4b עליה supplements M. 2b כורך עליה סמרטוט. Part of this T. paragraph, namely, שאדם מולול את החמין, is given in Rabbi 134b as a statement of Rab, whereas in Yer. XIX, 3, it is quoted by R. Bo as תני שמואל.

T. 5-7 supplement the statement in M. 3c about a premature child, concerning which it is not known whether it be as seven month or eight month baby ספק. Hence, the compiler took the occasion to explain in detail, in T. 5b-6, the status of the eight month child

7. The Mishnah and baraita in Babli, 135a use the term מחלקין whereas Tosefta and Sifra employ the verb ירוחין.

8. This is the best known phrase, though others are also found.

9. In regard to the meaning of the word, there are three interpretations, one by Sherira, (cf. Lewin, Ozar-Geonim, Shabbot, p. 121-2), and two others by R. Hananel, cf. Loew, Hoffmann Festschrift, p. 125.

in Jewish Law,<sup>10</sup> and in T. 7 the symptoms whereby one may identify an eight month child are described. R. Sh. b. G. defines what is considered a נפל, i e., a non-viable birth.

T. 8 deals with the case where a child need not be circumcised, i. e., in the event that three older brothers died as a result of the operation; similarly a woman, who became a widow thrice, may not remarry. Inasmuch as the T. begins with the law concerning marriage, rather than with circumcision, it may be inferred that this paragraph is a quotation from another treatise. However, in T. Yeb. XIII, 4 only the clause concerning marriage is found.

In order to understand why T. 9 was introduced at this juncture, it is necessary to recall that in Sifra 58c, four instances are cited where circumcision may not be performed on the Sabbath. Three of these points are mentioned in the Mishnah in the same order as found in the Sifra, as was noted above. The fourth point is נולד כשהוא מהול, which does not appear in the Mishnah. However, in an earlier recension of the M., it may be assumed that there was some remark about נולד כשהוא מהול אין דוחין עליו את השבת. Hence, T. 9 was brought in at this point because it contains two other laws concerning מהול.

Furthermore, it is important to note that T. 9 is of composite origin. The oldest part of this paragraph is the statement of R. Sh. b. E. לא נחלקו בית שמאי ובית הלל (lines 19-22), which is itself merely an excerpt from the statement in the Sifra in question. Later on was added the passage T. 9a המשוך צריך למוט<sup>11</sup> until בין ביום ובין בלילה, which is reproduced with slight verbal changes in Yeb. 72a-b, because it contains a regulation concerning one who is born circumcised. The statement of R. Sh. b.E. אם היה מסורבל בבשר,

10. In regard to T. 6, the following facts may be noted. For the law of Levitical impurity, cf. T. Oholot, XIV, 6 = B. B. 20a. The law ואינו זוקק ליבום etc. is an inference from M. Niddah V, 3. In regard to the whole question, see also Preuss, *Biblichisch-Talmudische Medizin*, p. 456-7.

11. In l. 11 omit the words אם המשוך, which are not found in the current editions of the Tosefta. In l. 13 the reading should be לרבות את המשוך, המשוך ומי שנוגד כשהוא מהול. The second המשוך was dropped out because it was erroneously taken to be a repetition of the first, but as may be seen from Yeb. 72a and Y. Shab., XIX, 2, it belongs here. The custom of epispasm is first mentioned in the Hellenistic period, cf. Juster, *Les Juifs dans L'Empire Romain*, II, 284, note 4; Schuerer I, 194, note 26 and R. E. J. 34, 196.



which is a comment upon M. 6, is clearly out of place in its present context, and we are unable to explain how it came in here. Similarly, R. Yose's haggadic remark *מנין למילה שהיא במקום פרי* does not belong here and was most likely found originally after T. 10 at the conclusion of the discussion of the laws of circumcision. It seems to be a polemical utterance directed against those who attempted to interpret the law allegorically,<sup>12</sup> especially since in the Bible the phrase is also used metaphorically, note especially Jer. IV, 4.

The second part of this chapter T. 11-17, deals with the law which permits the suspension of the Sabbath ordinances in order to save human life. It is rather strange that such an important statement of law should be omitted in the Misnah of Shabbat,<sup>13</sup> when the details concerning the law against carrying are presented with such fullness. Perhaps the fact that the Judeo-Christians were too ready to annul certain Sabbath laws on slight provocation,<sup>14</sup> induced the compiler of the M. to be reticent on this point. The matter was considered to be of great importance, as is shown by the fact that in the Tosefta there is reserved a good deal of space for it.

Before discussing the subject matter in the T. 11-17, we wish to raise the question why the law concerning *פסוקה נפש* is introduced at the end of the chapter concerning circumcision. One would expect it in connection with Ch. XVI, where the laws about extinguishing fire are given or in Ch. XIV, where the laws concerning the preparation of medicine are set forth.

However, the compiler of the T. followed some ancient authorities who brought the law of *פסוקה נפש* into relation with that of circumcision. Thus in T. 6, R. Yose derived from Ex. 31, 13 the law that the saving of human life and the performance of the rite of circumcision take precedence over the Sabbath, whereas R. Elazar b. Azariah concluded that the Sabbath is suspended in order to fulfill the Abrahamic covenant by an argument a fortiori drawn

12. Cf. Epistle of Barnabas, ch. IX, where circumcision is given a spiritual meaning. The remarks of R. Akiba in Gen. R. 46, 5 (ed. Theodor p. 462-3), of R. Josiah, R. Jonathan, and Rab in Shab. 108a seem to be motivated by a polemical tendency, cf. also Ginzberg, Legends, V, 233.

13. It is mentioned incidentally in Yoma VIII, 6.

14. Cf. Matthew XII, 1ff; Luke XIV, 3.

from circumcision. For this reason, we find the laws concerning פקוח נפש at this juncture in the T.

T. 11-17 may be divided into two parts, 11-15, and 16-17. The former specifies various cases of פקוח נפש, when the law of Sabbath may be suspended, whereas T. 16-17 is Agadic in character, presenting different views as to the Biblical source of this law. As is well known, the problem became an acute one in Maccabean times, when Jews preferred to be slain than to defend themselves, as we learn from the Book of Maccabees and Josephus.<sup>15</sup> Later on, the rabbis took a definite stand on this question and permitted fighting on the Sabbath in self-defence, cf. T. Er. III 7. Traces of the stricter Halakah are found in the Mekilta, where it is stated that אין פקוח נפש דוחה את העבודה,<sup>16</sup> and in the writings of the Damascus sect<sup>17</sup> we read וכל נפש אדם אשר תפול אל מקום מים ואל מקום אש יעלה איש בסולם וחבל וכלי.

While the Mishnah took for granted the fact that one may violate the Sabbath to preserve human life,<sup>18</sup> the early and later Tannaim were debating the Biblical sanction for this practice. The T. presents the views of four scholars in regard to this point, namely that of R. Yose,<sup>19</sup> R. Eliezer<sup>20</sup> and two recensions of R. Akiba's view.<sup>21</sup>

15. Cf. Schuerer, *Geschichte* II, 558-60.

16. Cf. Friedmann's note to p. 80b.

17. Cf. Schechter, *Documents of Jewish Sectaries*, vol. I, p. 11, 1. 16-17, and Ginzberg, *Unbekannte Juedische Sekte*, p. 161, note 2. On the other hand, the story of Jesus' quarrel with the Pharisees, who were supposed to object to his healing on the Sabbath, (Matthew XII, 14; Luke XIV, 4) does not imply that his opponents held to the earlier and stricter view in regard to פקוח נפש, for he alludes to the practice of saving an animal out of the pit on the Sabbath, (Matthew XII, 11 and Luke XIV, 5), which is practically allowed by the Rabbis, cf. Shab. 128b. It seems that they contended with him because he healed persons who were not dangerously ill, and did so by magic, Shab. 30a. ואי בחולה שאין בו סכנה חייב חטאת.

18. Cf. M. Shab. XVIII, 3 and II, 5.

19. In Yoma 85b, it is given in the name of R. Yose b. R. Judah, but in Mekilta (ed. Friedmann, p. 103b) and Mekilta di R. Shimon, p. 160, in the name of R. Yose ha-Galili.

20. In the sources quoted in the previous note, as well as in Tanhuma Wayeshev, ed. Buber, p. 91a, it is cited as R. Elazar b. Azariah, which is undoubtedly the correct reading. In Tanh. Jethro, 8 the reading is R. Eliezer, but in Tanhuma Mase, 1, and ed. Buber, p. 81b, it is given anonymously.

21. The view transmitted by R. Aha in the name of R. Akiba is found in the parallel passages in the name of R. Ishmael, and the Tosefta should be corrected accordingly.

The view of R. Yose is interesting because we learn incidentally that he derives the law that the rite of circumcision supersedes the Sabbath from Ex. 31, 13, instead of 12, 3.

The opinion of R. Elazar b. Azariah goes back to the old notion that the neglect of circumcision endangers the life of the child or parent, as we find it in Exodus IV, 24-25, as R. Hananel in Yoma 85b correctly explains. There is a direct parallel to this strange view in John VII 23. We cannot accept the suggestion of Hoffmann<sup>22</sup> that the whole phrase *מפני מה מפני שמחייבין עליו כרת* <sup>23</sup> is a later gloss. It may be admitted, however, that the words *מפני מה* may not have formed part of the original statement of R. Elazar. The meaning of the phrase *על אבר אחד ממנו דוחה את השבת על כולו לא ידחה את השבת*, is as follows: If the Sabbath may be suspended because of the consequences that may follow the neglect of one limb (i. e., the failure to perform circumcision), it is all the more just that the Sabbath should be violated that man's whole body may be saved.

R. Akiba's view, while differently worded, is substantially the same as that found in the parallel sources. It is interesting to note that this argument of R. Akiba is presupposed in Matthew XII, 5, where Jesus, justifying the plucking ears of corn on the part of his hungry disciples, says as follows: "Oh have ye not read in the law, how on the Sabbath day the priests in the temple profane the temple, and are blameless." It is strange that Strack and Billerbeck, in their commentary upon this verse, p. 620-622, omit to cite this passage of the T., which is a direct parallel.<sup>24</sup>

22. Jahrbuch der Juedisch-Literarischen Gesellschaft, VII, 1909, p. 318.

23. The fact that the Bible imposed the penalty of *כרת* for the non-fulfillment of this rite, makes this ceremony of great importance, and should, therefore, be punctiliously performed on the eighth day, as prescribed, cf. Pesahim 66a, where Hillel gives as one reason why the Paschal lamb may be offered on the Sabbath, *מפני ששנוש כרת אינו דין, שדוחה את השבת*.

24. En passant, it may be asserted that this commentary loses a great deal of its value by piling up a vast amount of irrelevant material upon each verse, most of which should have been distributed among the excursuses. The citation of Talmudic passages directly bearing upon the verse with an explanation of the relation of the Rabbinic text to the verse, would have proven more profitable to the student.

The fourth view transmitted by R. Aha, in the name of R. Akiba, is actually R. Ishmael's view, as may be deduced from the p a r a l l e l passages. The T. adds the statement *הוא לא נתנו מצות ... ולא שימות בהם* which is found in Yoma 85b as a statement of Samuel. It need not be assumed that Samuel's remark crept into the Tosefta. It may just as well be that Samuel was acquainted with a baraita which emanated from a source common to the Tosefta. The passage beginning (line 23) with the words *ואין לך שעומד* is not part of R. Ishmael's statement, for it is in contradiction to his view, as expressed in Sifra 86b and Sanh. 74a.<sup>25</sup> Because of this fact some later copyist, who believed that all of T. 17 is by one Tanna, changed the reading from Ishmael to Akiba.

To what extent the question of the origin of the law that the preservation of human life supersedes the Sabbath agitated the Tannaim is evident from the fact that in Yoma 85a-b no less than six different views are cited. Three scholars derive it by means of the argument *a fortiori*, whereas three others quote Biblical verses directly to substantiate their point. The view of R. Jonathan b. Joseph *היא מסורה בידכם ולא אתם מסורים בידה* which is the best known is also found in the New Testament (Mark II 27).

In the Yerushalmi (Yoma VIII, 5) only two opinions are cited. R. Yohanan<sup>26</sup> quoted the view which is given in the Babli in the name of R. Yose, and an anonymous scholar cites R. Shimon b. Manasye's explanation.

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25. The passage is a combination of the view of R. Shimon b. Yehozadak, with the supplementary remark of R. Yohanan transmitted by R. Dimi, cf. Graetz, *Geschichte* IV, 429-30 and Ginzberg. *Ginze Schechter* I, 18-20.

26. From Yoma 85a it is clear that R. Yohanan was familiar with R. Akiba's view.

## CHAPTER XX

The last five chapters, namely Ch. XX-XXIV, constitute a sort of appendix to the treatise. The contents are less logically arranged than the preceding chapters. Much of the material is discussed in one form or another in the earliest part of the tractate. Regulations concerning the preparation of food are enumerated in M. XX, 3, XXII, 1-4a, XXIV, 2-4. The laws of handling objects are explained in M. XX 4-5, XXI-XXIV, 1. Previous discussion of these laws are found in M. XVII-XVIII 2, as well as III, 6, and IV 2.

Ch. XX, 1-3 mentions the law concerning the preparation of food on the Sabbath, even where the use of fire is not necessary. M. 1 deals with the use of a filter on the Sabbath and the festivals<sup>1</sup> for the straining of wine, concerning which there is a difference of opinion between R. Eliezer and the sages. In the Babli 138a, and Yer. XX 1, the amoraim differ as to what category such work belongs. According to one opinion, it is considered as *בזור*, while according to another, it is viewed as *מזקק*. Undoubtedly in the mind of the Tannaim the reason for these regulations was the Biblical verse Ex. XVI, 5.

M. 2-3 continues the discussion of the preceding paragraph. One may strain wine in a cloth (*סודר*), the purpose being to make certain that it is free from insects,<sup>2</sup> but one may not dissolve assa

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1. It seems that the old halakah Meg. I, 5 *אין בין יום טוב לשבת* (Cf. Ginzberg, Hoffman Festschrift, 321 ff.) gave rise to a collection of statements where the law concerning the Sabbath and festivals originally found together. The compilers of the M. and the T. were familiar with it and incorporated a number of them in their work, cf. for example, M. Shab. III, 4; XVIII, 3; Bez. V, 1-2; T. Shab. XII, 14 (=T. Suk. 1, 8), XVI, 19, 24; Bez. I, 6-7, 11, 21; II, 9-11, 13-14, 18-19; III, 12, 18; IV, 4, 10.

2. Cf. Krauss, *Archaeologie* II, 243. In T. Terumot VII, 11, it is said *הרי זו דעת אחרת המסנן את היין ואת החומץ*... filtering wine or vinegar is considered an act of heresy. Evidently some form of libation connected with idolatry is implied here.

foedita in warm water and drink it. According to Abaye, this was forbidden because it was similar to week-day work<sup>3</sup> שלא יעשה בדרך שהוא עושה בחול.

M. 4 states that one may clean out a manger and take hay from one animal and place it before the other<sup>4</sup>, and M. 5 explains when the straw on a bed may be handled and what may be done with a clothes-press.

### TOSEFTA

T. XVI, 1-5 comment upon M.XX. In T. 1 the remark of R. Judah modifies the statement of the sages in requiring the strainer to be one that had been already used on the week-day. It may be assumed that the opinion of R. Abin b. Kahana in Y. Shab. XX 1, תיפטר במשמרת חדשה presupposes knowledge of this T. passage. The second statement of R. Sh. b. G. is in accordance with the view of the sages, and is known to Zeiri in Babli 139b.

T. 2 comments upon M. 2, which speaks of straining an egg. In the current editions of the T. the reading is מַצְנֵנִין whereas the Vienna MS. reads<sup>5</sup> מַצְנֵנִין. Perhaps the error arose because of the fact that a צ was pronounced a ד. The Erfurt MS. reads מַפְנֵן which is clearly a graphic error.

T. 2b, which explains M. 3b, is clearly out of place and belongs after T. 3. It is unlikely that the T. here presupposes a different sequence in the M. The reading in the Erfurt MS., אין מערין בכברה בשבת, is the correct one, and corresponds to Babli 140b, where the phrase אין משניחין is used.

T. 3a comments upon the statement אין שורין את החלתית בפושרין. It was known to R. Yannai, but not to R. Yohanan, as is evident from Babli 140a.

3. Shab. 140a. cf. also 138a, where Abaye uses the same phrase; cf. also T. Shab. XIV, 17; XVI, 8; XVII, 5; XVIII, 6; Babli 143b, 147b where this idea is found.

4. Cf. R. E. J. X., 307-309; XXI, 278-281.

5. Cf. Weinstein, Zur Genesis der Agada, II, 14, note 5.

T. 3b contains the remark about sprinkling the house. While this T. is not quoted in the Babli, it might have been known to Amemar, for we read (Shab. 95a) *אמימר שרי זילחא בשבת*. Note that the same word *גילחא* is found in the T. *החבית את מולחין*. In another baraita it is stated *אשה חכמה מרבצת ביתה בשבת* where the word *מרבצת* is employed.

T. 4 repeats M. 4a with a slight change. Instead of *אוסרים*, the T. reads *בן וכן אין מסלקין לצרדין*.

T. 5a amplifies the statement in M. 5, which lays down the ruling concerning the handling of straw on a bed used for mattress, and T. 5b explains the law concerning the loosening of a clothes-press mentioned in M. 5b.

## CHAPTER XXI

Ch. XXI continues the discussion about the law concerning handling objects on the Sabbath. M. 1-2 gives several illustrations of the principle stated in T. XVI, 6 that one may handle an object though the latter contains something that may not be touched on the Sabbath,<sup>1</sup> cf. M. X, 5.

M. 3 states the controversy between B. H. and B. Sh. in regard to removing objects from the table after a meal. According to this M., the Bet Hillel adopt the stricter view and the Bet Shammai uphold the lenient opinion. However, this M. is not found in Eduyot, where the חומרי מ"ה are enumerated. Perhaps there was in early times a difference of tradition concerning the controversy between B.H. and B.Sh. Thus the Tosefta XVI, 7 preserves a version of the controversy between the two schools, where BH. take, as usual with them, the more lenient view. R. Nahman<sup>2</sup> (Shab. 143a) who reverses the authorities in the M., was acquainted either with the T. or with a similar Tannaitic source. The extremely rigorous view held by R. Zechariah seems to have been known, in part at least, to the Babli. Thus, in Shab. 143a, it is said רב פפא זריק להו אחורי המטה, which reminds one of the statement in the T. נוטל ומשליך מאחורי המטה. The quotation in Babli 143a, שהיה מחזיר פניו אחורי המטה וזורקן, seems to be incorrect, as one does not see the point in turning back while throwing away the particles from the table. R. Yose's comment upon R. Zechariah<sup>3</sup> is given in longer form by R. Yohanan in Git. 56a.

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1. In regard to M. 1, נוטל אדם את בנו, cf. Schechter, Documents of Jewish Secretaries I, p. 11, line 11.

2. Cf. also Tosafot Shab, 143b s. v. אנו אין לנו

3. In regard to this Tanna, cf. Graetz, Gesch. III, 5th ed., p. 459, and 820; J. Q. R. VIII, 232; Buechler, Types of Palestinian Piety, p. 12, note 2, and Hoffmann, Magazin XX, 81.



## CHAPTER XXII

Chapter XXII may be divided into two parts: M. 1-4a contain various regulations concerning food on the Sabbath, M. 4b-6 about bathing, anointing and some medical remedies. Inasmuch as M. XXI, 3 uses the expression *ספוג אם יש לו עור* Ch. XXII, 1 which has the phrase *ובלבר שלא יספוג* is introduced here. The transition in M. 4b is not quite smooth. However, T. XVI, 14, which corresponds to M.4b, does connect well with the following paragraphs. In one instance the sequence of the M. is different from that of the T., namely M. 4 must have followed M. 3, as appears from T. XVI, 11-13. In this case the order of the T. is the more logical. A number of points discussed in this chapter have been dealt with elsewhere in this treatise. For M. 4a, which contains the regulations concerning the keeping of food cool. Compare M. IV, 1-2. The laws about bathing and anointing in M. 5-6a are also set forth in M. III, 4. Regulations concerning medicinal remedies in M. 6b are also given in M. XIV, 2-4.

## TOSEFTA

T. XVI. 9-24, which comment upon M. XXII, is derived from two sources; T. 9-19 explain the whole chapter of the M., whereas T. 20-24 present remarks from another source upon M. 5-6. This will account for the fact that there are double comments in the T. upon M. 5-6, namely T. 15-19 and T. 20-24. In T. 22 (p. 136, lines 13-14) the statement *לא ישטח אדם (ו) כליו ברשות הרבים* (while it is actually a comment upon M. 4b *שומחן בחמה*) is brought in its present context because of the previous statement *אין מולין ברשות הרבים מפני הכבוד*. Note that both passages con-

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1. The Vienna MS reads *אין*. This passage may be added to the list given by Prof. Ginzberg in Schwarz, Festschrift, p. 332, note 4.

tain the phrase ברשות הרבים. Hence it need not be assumed that the T. presupposes here any different order. As a matter of fact, all the statements in T. 20-24 are loosely connected with M. 5-6, except T. 20, which is a direct comment upon M. 5. It seems that T. 21-22 to the words מן הזיעה are derived from one source and supplement the statement in M. 6 ואין עושין אפיקטויון. At first blush it would appear that these T. statements have no bearing upon the statement of the M. However, it may be conjectured that the M. read originally מפני הכבוד ואין עושין אפיקטויון. Hence T. 21-22 was brought in here because it contained הכבוד מפני הרבים. In both cases the phrase מפני הכבוד is used. Note also the baraita in Shab. 12a, which reads: אין פולין ברשות הרבים מפני הכבוד כיוצא בו אמר רבי יהודה ואמרי לה רבי נחמיה אין עושין אפיקטויון מפני הכבוד whence it is seen that these two statements were found together in a parallel Tannaitic source. T. 22<sup>2</sup> אין רצין בשבת is a comment upon M. 6 אבל לא מתעמלין T. 23-24 are supplementary to M. 6 אם נתרפא נתרפא. The connection of T. 24 with the M. is not so close, but if it is recalled that in M. Bez. III, 4 this law is discussed in regard to an animal that fell in a pit where it is a question of saving its life, then its relation to M. in Shabbat is not so remote.

To come back to the first group of T. passages 9-19, it may be observed, as was noted above, that the T. preserved the same sequence in paragraphs with one exception, namely, that M. 4a preceded M. 3.

T. 9, which is partly quoted in Babli 143b explains M. 1, T. 10-12 supplement M. 4a. T. 10 is brought in here because of the phrase פנה שטמנה. Both texts have in common the fact that they deal with foodstuffs that were put away because of the Sabbath. From Babli 123a, where this T. is quoted with some variants it would appear that the baraita was found in connection with M. XVII, 1.

T. 11-12, which are quoted in T. Bez. II, 9, are introduced as a supplementary remark to M. 4a ואת המים היפים ברעים T. 13, which is also quoted from T. Bez. III, 13, paraphrases M. 3a שובר אדם את החבית At first blush one can not see why M. 5,

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2. It is quoted in דבריים וזמא, ed. Buber, p. 20.

which deals with bathing and anointing was brought in. It seems possible that the compiler of the M. introduced M. 5 הרוחץ, because of the preceding statement in M. 4b במים כליו בדרך, which, in turn, found a place here merely because this passage contains the word מים and so M. 4a ואת המים היפים ברעים. On the other hand, T. 14, which contains the statement ואין מדיחין את הקרקע ביום טוב would also explain why the law about bathing was added at this juncture. For we find in the Babli 40b the following remark מעשה בתלמידו של ר' מאיר שנכנס אחריו לבית המרחץ ובקש להדיח קרקע ואמר לו אין מדיחין, whence it is seen that the two laws are associated together. T. 15-19 comment upon M. 5-6a.

## CHAPTER XXIII

Chapter XXIII discusses a number of miscellaneous acts partly prohibited on the Sabbath. M. 1 permits one to borrow foodstuffs on the Sabbath for a short period of time.

M. 2 allows one to call the roll of his guests on the Sabbath, but not to read the names from a written list, and one may cast lots to decide how the portions at the table are to be distributed.

From T. XVII, 4-5 it appears that the order in M. 2 was reversed, *מונה אדם את אורחיו* was mentioned and then the statement *מחשב אדם יציאותיו*.

The connection between M. 1, 2 and 3, which states that one may not hire workmen on the Sabbath, is not clear, but T. XVII 6 which reads *מחשב אדם יציאותיו ... וכמה הוציא לפועליו וכמה הוציא לאורחיו* explains why our Mishnah discussed the law about hiring at this juncture. This leads the compiler of the Mishnah to discuss the law about *מחשיבין על התחום* in M. 3-4, i. e., when it is permitted to walk to the extreme end of the distance allowed on the Sabbath, to await nightfall there, in order to make certain preparations. It is forbidden to do so for the purpose of hiring workmen, but one may do so to make arrangements for a wedding or a funeral. The mention of the latter point is the reason for M. 5, which discusses the regulations concerning the treatment of a corpse on the Sabbath.

## TOSEFTA

Ch. XXIII of the M. is dealt with in T. XVII. This chapter of the T. too is of composite origin. T. 1-3 is derived from one source, whereas T. 4-19 hail from another. This will account for the fact that there are double comments in T. 1 and 5 on the statement of M. 2 אבל לא מן הכתב. It seems that T. 1-3 was originally in the treatise of עבודה זרה, as a matter of fact T. 2-3<sup>1</sup> are actually found in T. Abodah Zarah I, 17-18.

T. 4-9 comment upon M. 2. T. 5-7, though containing different regulations are connected with one another by the fact that they are concerned with אורחין. T. 8 supplements the statement אבל לא מן הכתב. T. 9,<sup>2</sup> which speaks of figuring accounts on the Sabbath, seems to be in contradiction to T. 6, (cf. Shab. 150a-b). It is brought in here because the previous paragraph T. 8 contains the phrase וואם היה דבר שצורך מדינה, and T. 9 has the phrase שצריך להן.

T. 10-12 supplement M. 3. The first part of T. 10 is preserved in the baraita in Er. 38b.<sup>3</sup> T. 11, which employs the phrase לא יטייל . . . כדי שתחושך is derived from a different source than T. 12-13, which uses the Mishnaic expression מחשיכין על התחום. From T. 10-12 it would appear that a different sequence is to be presupposed in M. 3, namely, the following (אין מחשיכין . . . 1) לשבור פועלין 2) מחשיך הוא לשמור ומביא

T. 13-15 repeat and supplement M. 4. In T. 13 the statement of Abba Saul is out of place and should follow immediately upon T. 12, as it does in the baraita in Shab. 151a.

T. 16-17 are derived from the same source, since they have the common phrase חזין לתחום. These two passages do not actually belong here, but were inserted at this juncture because of phraseological resemblance to the Mishnah. The latter has the phrase לא יזיום ממקומם, whereas T. 17 uses the expression שלא יזיוו בו אבר

1. On the unusual expression, Angels of Satan, cf. Strack and Billerbeck, Commentary on Matthew, p. 984, and Ginzberg, Legends of the Jews, V, 85.

2. On חשבונות as a prohibited work on the Sabbath, see Mekilta di R. Shimon, p. 166 and Ginzberg, Hoffmann Festschrift, p. 325.

3. Cf. Ginzberg, Unbekannte juedische Sekte, p. 83, note 3.

4. cf. also baraita in Beza 37b, where this phrase is used.

T. 18-19 elucidate M. 5. T. 18 is incomplete and is quoted in fuller form in Babli 151b, whence it becomes clear why it was permitted to put cooling vessels upon a corpse.

T. 19 comments upon and supplements M. 5b with some haggadic remarks. It consists of three statements of R. Simon b. Elazar. In Babli 151b, they are quoted together with some minor verbal changes.<sup>5</sup> It is interesting to note that the first statement is introduced by the formula *תני*, the second by *תניא*, and the third by *ותניא*, indicating perhaps that the statements emanate from different sources.

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5. In the current editions of the Talmud the first two statements are given in the name of R. Simon b. Gamliel, but in the MS. and early editions the reading is R. Simon b. Elazar, as our Tosefta, cf. Rabinowicz, *Variae Lectiones ad loc.*

## CHAPTER XXIV

Ch. XXIV discusses a number of Sabbath laws for which it is difficult to find a logical connection. M. 1 explains the rule concerning a traveler who is overtaken by the Sabbath on late Friday afternoon *מי שהחשיך בדרך*. This point is mentioned here because in M. XXIII, 3-4 the law concerning *על התחום מחשיבין* is stated. Although an entirely different point is involved there, the expression *מחשיבין* is the same.

M. 2-4 gives various details concerning the law about feeding cattle on the Sabbath (cf. M. XVIII 1-2, XX4). Here too phraseological affinities are responsible for the introduction of these laws here. In M. 1 we find the expression *את החבליים מתירין* and M. 2 begins with the words *מתירין פקיעי עמיר*.

M. 5 contains a miscellany of statements. First is the law about the annulment of vows on the Sabbath. It is not quite clear why this point is found here. Perhaps M. Ned. X 5, which reads *נדרה עם חשכה מפר עד שלא תחשך* was originally in this chapter. If so, then this passage would naturally follow because of M. 1, *מי שהחשיך בדרך*. From a different source is derived the next statement *פוקטין את המאור ומודדין את המטלית*. In regard to stopping light-holes upon the Sabbath, cf. also M. XVII, 7. Perhaps this statement was made originally in connection with Friday evening, cf. T. Oholot XIV 1, which reads *ואלו הן שירי המאור חלון שהיה כותמו ולא היה לה מים לגומרה או שקראו חברו או שחשיכה לילי שבת*.

## TOSEFTA

T. XVIII, 1 corresponds to the last chapter of the M. T. 1-5 supplements the statements in the M.

T. 6-10 offers new material not presented at all in the M. T. 6-9 states the law concerning the duties and pay for a watchman on the Sabbath. T. 6 is cited in Erubin 104a and T. 7-9 are quoted from T. B. M. VII, 1, with some variations in Babli 58a.

T. 10 is a quotation from Bezah V, 2, with an additional comment. It seems that this last paragraph was added here because it has in common with T. 6 the phrase<sup>1</sup> ולא מטפחין ולא מרעדן .

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1. Cf. Buechler, W. Z. K. M. XVII, 177.



## NOTES BY PROFESSOR LOUIS GINZBERG.

P. 3, note 1. Cf. Hazan, *Teshubot-ha-Geonim*, p. 76a-119b.

P. 4, note 2. Cf. Heinemann, *H. U. C. A.* IV, 152ff. The oldest term for oral tradition is found in Ben Sira, 8:9. In the M. "shemuah" and some forms of the verb "shema" are also used in this sense, Cf. Yeb. VIII, 4, Ker. III, 7-9, Eduy. V. 7.

P. 4, note 5. The existence of a Sadducean code is based upon a statement of the scholiast to M. T., which is based upon pure imagination. Hence he gives a choice between a code of capital punishment—but strangulation is never mentioned in the Bible—or a code of literal interpretations of Biblical laws. The scholiast read *Gezerata* which he explained in accordance with Ket. XIII, 1; cf. Tarbiz I, no. 3, p. 131-132. The correct reading is *Gezerta*. It might refer to the edict concerning the placing of Caligula's statue in the Temple; cf. Schuerer, *Geschichte I*, 3rd ed., p. 507. For *Sefer Gezerta*, cf. *Sefer Ketuba*, Yeb. XII, 3. For the literature on this passage of M. T., cf. *H. U. C. A.*, VIII-IX, 295-297.

P. 5, note 20. The Tosefta has a play on the word "yesho-tetu" which it connects with "shitah" system.

P. 9, note 37. The passage speaks of public lectures and need not refer to his Mishnah at all.

P. 9ff. In regard to the problem of the "Setam Mishnah" the following is to be noted. The remark of R. Yohanan "Ani en li" etc. (Yer. Shab. III 6c, Kid. I 59c, Ter. II 41c and elsewhere) indicates that he acknowledges the authoritative character of the "Setam Mishnah" because it represents the view of the majority, unless he had information from his teacher concerning the author of the "Setam Mishnah"; by Rabanan is meant Rabbi and his academy, who agreed upon the "Setam Mishnah." Hence R. Yohanan

held that the standard practice was according to the "Setam Mishnah." But there were a number of anonymous mishnahs upon which no final decision was reached, and therefore R. Yohanan is quoted as either giving the authors of the anonymous Mishnahs (cf. Meg. 2a, Ket. 101b, Bek. 30a, Yer. Meg. III, beg., Ber. VII, 11b, Shab. IX, 12a) or actually offers a new reading which converts the "Setam" into a statement of an individual Tanna, cf. Hul. 122b, Shab. 147b, 157a, Yer. Ter. IV, 12d, Bik. I, 64b, see also Yeb. 43a and Hul. 137b where it is implied that R. Yohanan knew when a "Setam Mishnah" was real or not. When he met with a "Setam Mishnah" which he knew did not represent the majority, but at the same time did not know who the individual author might be, he remarked (Yeb. 29b) "I do not know who is the author of this Mishnah." The Babylonian Amoraim, who did not know of R. Yohanan's qualifying statement as given in the Yer. found difficulty in harmonizing his general principle concerning the standard practice with other statements that seemed to contradict this rule. Resh Lakish held that the anonymous Mishnahs represent the view of R. Meir, unless one had information with regard to the author of a particular "Setam." Resh Lakish's view, which supplements R. Yohanan's statement as R. Zera maintains, is to be understood as follows: Rabbi and his academy took over from R. Meir's Mishnah most of the "Setamot" which consisted of two classes: 1) old halakot transmitted by R. Meir, 2) halakot promulgated by him in controversies with his colleagues.

P. 10, note 44. For R. Zera's statement, cf. also Yer. Sotah VI, beg.

P. 12, notes 55-57. In Ned. 18b the meaning is quite clear that R. Meir and after him Rabbi have incorporated in Ned. the view of the Rabanan, while in Toharot the "Setam Mishnah" follows R. Eliezer. That the Mishnah Nedarim contains the view of R. Meir could not be doubted at all, as it reads distinctly "zu dibre R. M." Similarly, Nedarim 32b points out that M. IV, 1, is an individual opinion, giving the view of R. E., while the accepted view of the sages is given in B. B. III, 5, as pointed out in B. B. 57b, cf. Ran to Nedarim ad loc. Rab's remark in Pes. 86a is a purely historical statement to the effect that the "Setam Mishnah"

is not an old Halakah transmitted by R. Meir, but one first formulated by R. Judah in opposition to R. Shimon.

P. 12, bottom. Cases where a baraita is cited to prove that a "Setam" is in agreement with R. Meir are to be explained as follows: while the standard practice is in accordance with the anonymous Mishnah, there are "Setamot" which represent the individual opinion of R. Meir and were not accepted by Rabbi and his academy as standard halakah, cf. Yer. Mass. I, end and Yer. II, 1, beg.

P. 14, line 10f. If "Setam" were a verb, the statement would have to read "Setam matnitin ke R. Meir." It is difficult to tell whether the statement "We-kulhu aliba di R. Akiba" are the words of R. Yohanan or of the editor of the Talmud, but the meaning is that R. Akiba's pupils followed him in their teachings, though there are exceptions when the Mishnah is in accordance with R. Ishmael's view and against R. Akiba. The dependence of our M. on R. Akiba is less evident than that of Sifra or Mek. di R. S. upon R. Akiba's hermeneutics.

P. 14, note 66. In regard to this point, cf. Yad. Malachi, no. 581 and Yer. Maaser, I end, which supports R. Zemah Gaon's view and R. Eleazar's statement in Yer. Yeb. IV, 11, which shows that R. Yohanan decided against the "Setam Mishnah" if he knew it was R. Meir's view.

P. 15, note 75. Er. 13b indicates that Rabbi was a pupil of R. Meir and it is difficult to see why Rabbi should not avail himself of R. Meir's Mishnah if he found it serviceable. The frequency of the names of authorities cited in the Mishnah does not throw any light upon Rabbi's personal relations to the authorities mentioned. Of his teachers R. Jacob ben Kurshai is never mentioned, R. Eleazar ben Shammua is found about eighty times, R. Joshua ben Korha four times, and his father, R. S. b. G. about a hundred times. R. Shimon ben Yohai is very frequently cited, whereas R. Meir's name is found more than three hundred times.

P. 15, notes 76-78. If in the first version of the M. R. Meir was only referred to as "Aherim," it is unlikely that R. Shimon

would have failed to notice the suppression of R. Meir's name until he reached "Bekorot." Furthermore, the statement that even in the second recension of the M. Rabbi said "Amru mishum R. Meir" is in contradiction to the facts, for R. Meir is often mentioned in the M. by name. Hence even in the first recension R. Meir was mentioned by name. In regard to the passage in Bek. R. Meir was originally mentioned as "Aherim," because that view was merely attributed to him, and R. was not positive of the authorship, but as a result of his son's argument he changed it to "amru mishum R. Meir." Similarly, the distinction between this latter phrase and "Mishum R. Meir amru" is far fetched. In the T. "Aherim" occurs about fifty times, but in most cases cannot refer to R. Meir. The statement R. Meir was referred to as "Aherim" means that he was quoted as an anonymous author. The same is true of "Yesh omrim." "Aherim" never occurs in the M., but "Yesh omrim" occurs in Abot, Kinim, Midot, Tamid and Neg. The first four treatises do not belong to the M., cf. Ginzberg, Tamid, Journal of Jewish Lore and Philosophy, 293-4, while Neg. XIV, 1, which is found in Sifra seems to be a quotation from a Midrash to Lev. XIV, 16.

P. 16, note 82. According to an unknown source quoted by R. Sherira Gaon (Schechter, Saadyana, 119) R. Meir, and after his death, R. Jose exercised the function of patriarch between the time of R. S. b. G. and Rabbi.

P. 20, note 103. Laws of theft and robbery are not dealt with together, as the former treat of fines, while the latter deal with compensations, for "habalot"; cf. Ginzberg, Schwartz-Festschrift, 351.

P. 21, note 105. "Mab'ir" was the original form, as it rhymes with "Heb'er," just as "Shor" rhymes with "Bor." But Rabbi had already before him the form "Mab'eh" the meaning of which was unknown to him, as is evident from the fact that he does not explain its characteristics as he does those of the other three. Rab takes "Mab'eh" to stand for the owner of the animal, the gleaner. Samuel takes it to refer to the animal that damages by gleaning. The change from "Mab'ir" to "Mab'eh" was due

to the fact that the former usually meant one who caused the fire. The detective spelling "Yab'er" instead of "Yab'ir" in the Bible seems to be an attempt to distinguish between "causing a fire" and "gleaning."

P. 25. The first chapter of Kid. consists of two different collections, the first 1-5 contains ten laws of acquisition, the second I, 6-10 consists of twelve miscellaneous topics each of which begins with "Kol." This collection belongs to the old arrangement of the halakah by external formulæ. The "Kol" collection was brought in because it contained the statement "Kol hana'aseh damim" which belongs to the laws of acquisition that forms the subject of the first collection. Other examples of decalogues of the M. are Ter. I, 4-II, 5, which contains ten statements of "En Tormin," Shab. V, 1-2, VI, 1; Arakin ch. II contains two collections according to "En Pahot" etc. Dodecalogues are also found in the M. In Hul. ch. I-II there are twelve statements containing the phrase "Shehitato kesherah." This collection is interwoven with twelve other statements arranged according to the principle of contrast. The latter are brought in because of M. I, 4 where Melikah and Shehitah are contrasted. Other dodecalogues are found in Shab. VI, 2-4, Maasrot I which contain twelve regulations for twelve different kinds of products. The "En ben" collection in Meg. I contains thirteen halakoth, but in M. I, 9 there are two conflicting statements concerning the high priest (cf. Meg. 9b). It seems that originally the two versions of the twelve "En ben" statements were current, but Rabbi being unable to decide between the two, incorporated both statements. In some cases the original ten statements were enlarged, cf. Men. III, 6-7 where the M. after enumerating groups of twos to sevens comes back to twos and fours.

P. 26, note 5. In regard to Git. 44a, cf. Hazan, Shaare Teshubah, p. 108b. Rabbi Nissim's identification of Mek. with Megilta (Aruk s. v.) is not plausible, cf. also Ginzberg, Geonica II, 39.

P. 27, note 9. Cf. Tarbiz, IV, 193.

P. 27, note 11. As a matter of fact, R. Hiyya was younger than Rabbi as may be inferred from Kid. 33a and Sanh. 29b.

This may also be deduced from the fact that about sixty years after Rabbi's death R. Kahana met Hezekiah, Hiyah's son (Men. 23b) who had already given decisions in his father's life-time, (Bez. 9b). R. Joshua b. Levi was a head of an academy in the time of R. Hiyya (Ekah R.).

P. 28, note 20. Since Al-Nakawa uses rhymes, one must supply the words R. Hoshaya . . . Bereshit Rabbata to rhyme with Tosefta.

P. 29, note 24. R. Zera means that only the Tannaim that specialized in the transmission of the baraitot of R. Hiyya and R. Hoshaya were accurate, while the other "Tannaim" were not reliable, and their traditions not authoritative. It is also possible that R. Zera meant that all baraitot whose authors are known are authentic in contrast to anonymous baraitot. Interesting for the attitude of the Amoraim towards the baraitot is the remark of Abaye in Git. 6b in connection with the statement of R. Isaac.

P. 32, note 45. This statement refers only to anonymous baraitot. In Pesahim 101b, Bar Hinak is not the author but the "Tanna."

P. 34. Kid. of Levi might mean the text of the Mishnah according to the version used in the school of Levi.

P. 34, note 58. Hilkata le-Meshiha refers to the normation of laws no longer applicable today, but not to the study thereof.

P. 35-36. There is no proof that Samuel changed his view. Talmud means here the Mishnah according to authoritative interpretation. This Baraita is pre-Mishnaic. If it were Amoraic, we would expect M. to be mentioned.

P. 37. The baraita ascribed to R. Johanan b. Zaccai may be by another Tanna of the same name.

P. 38, note 10. The fact that certain views in the Tosefta are in opposition to R. Akiba is no evidence against the truth of R. Yohanan's general statement any more than that certain statements in the M. contradict R. Akiba.

P. 39, note 13. From the reference to Mishnat R. Nathan in Ket. 93a and Tem. 16a where one would expect "Dibre R. Nathan," as well as the statement in Mek. Yitro, (ed. Friedmann 60a) "when R. Nathan died his learning disappeared," it appears that he composed some halakic collection based on Babylonian traditions like his younger colleague, R. Hiyya. (B. R. 33:3). But his work did not long survive him.

P. 39, 14. Rabbi and R. Nathan were actually the last authorities to be mentioned in the M.

P. 41-42. The Tosafot of Bet Rabbi are very likely modelled after the Tannai debe Rabbi of the Yerushalmi, which a later author thought to have been a kind of a Tosefta.

P. 43, note 51. The numerous Greek words in the Tosefta, mostly unknown to the Babli, presuppose the Palestinian redaction of the Tosefta and the genuinely Tannaitic Hebrew points to an early origin of the compilation.

P. 46, line 6. The reference should be to the Greek translator of the Bible.

P. 46, note 67. It was Pineles who suggested that M. I, 2b was the original reading to which Schwartz objected. The greater part of M. in ch. I-II consists of a collection of statements containing the formula 'Shehitato kesherah.' The old Halakah in M. I, 2b was interwoven in the old collection because it was cited as a proof for the statement "ha-shohet bemagal." Hence the T. which directly comments on M. I, 2b does not retain the original order. The bulk of the laws of slaughtering go back to the temple practice, cf. Ket. 106a. Most likely the old Halakah "hakol shohetim" was meant to contrast the shehita of Hulin with that of sacrifices. In regard to the latter certain persons were excluded (Zeb. III, 1), sacrifices could be slaughtered at night and the instrument used for slaughtering had to be a sacred vessel. None of these rules applied to Hulin.

P. 48-49. For the structure of M. Ber. IX the following classification is to be noted: 1) the blessing connected with historical events; 2) extraordinary phenomena of nature;

3) majesty of nature; 4) beneficial occurrences in nature. Rain is mentioned together with "good tidings," not only because of the identity of the benediction, but also because they are both beneficial natural occurrences. M. 3 is abridged and originally the following three instances were given, (cf. Yer. IX, 1 and Babli 59b). If he learned that he became an heir to property, he says "dayyan haemet;" if he learned that a male child was born to him, he says "Sheheheyanu." The statement in 3b "meborek al ha-raah," etc., means that one may recite in case evil befalls one the blessing "hatob umetib" and in case good occurs to one "dayyan haemet," since the justice and goodness of God are shown in the evil and good that befalls man. Hence 3b is a Halakic statement and 5a an Agadic statement, and is placed at the end. The presence of the statement 5c "lo yekal" in this chapter is to be explained as follows. Originally after 4a "ha-niknes le-kerek" there followed the statement "ha-niknas le-merhaz" (T. VII, 17) and "ha-niknas le-bet ha-kise." (Babli 60b, Yer. IX). In connection with the latter "lo yekal" was brought in and by association of ideas "lo yiknas" was added. The statement "kol hotme berakot" originally concluded ch. VIII, but when ch. IX was added it was removed to the end of the treatise, in order to end with an Agadic statement. T. 5-6 are put together because of the similarity of the word "ne'eman."

P. 51, note 81. Another instance is Pes. II, 8b where the connection with 8a becomes clear by the statement in T.II (III) 5.

P. 53, note 88. It is possible that R. Hiyyah did more than repeat the M., cf. T. Shabuot, VI, 6. For the purpose of the Talmud the short sentence was sufficient, cf. also "Ritba ad loc."

P. 53. The close affinity between T. and Yer. has been already observed by R. Elijah Wilna.

P. 57. Philonic ideas or views of Josephus found their way in later Jewish writings through Christian influence.

P. 58. An interesting parallel is offered by the use of the Yer. by many of the codifiers. Rashi's acquaintance with it



was very slight, while his contemporary Albarceloni knew it thoroughly. R. Elijah Wilna mastered the Yer., while his older contemporary R. Ezekiel Landau had only a slight acquaintance with it.

P. 66. M. I, 1 belongs to a collection arranged according to numbers. Hence "yeziot ha-shabbat" does not form the first halakah. Exodus, XVI, 29 is not considered in the Talmud as a source for the prohibition of carrying, but that of travelling on Sabbath. Hence the laws of carrying cannot be connected with this verse. The explanation of the Tosefot that M. I, 1 is used as an introduction to M. I, 3 is correct and we may assume that later on M. I, 2 was added.

P. 67-68. M. I, 4 need not be referred to the T. to explain its presence in the ch. The body of laws from 5-11 deal with work undertaken before the sabbath and continues logically in M. I, 3 by giving the dispute between the two schools. The author of the M. has the historical remark about the eighteen decrees that were issued by the two schools. The reading "we-illu" or "illu" does not throw any light upon the subject, as both might refer either to what precedes or follows, cf. the use of "we-illu" in Peah II, 1 and M. K. III, 1 and note the use of "illu" in Ber. II, 2.

P. 68, note 10, cf. Horowitz, Beitrage zur Erklarung der Mechilta des R. S., p. 17.

P. 71. There is no reason to assume that T. 9 is of a different source. The cases that are prohibited, but are not punishable, are mentioned first. The point is that in case of the merchant that he not only "lo yeze," but "we-im'yoza hayyat." As to the second part of the statement, see T. VIII, 17 which is parallel to Babli 147a.

P. 71-72. In Tosefta "Korim" is used because of the preceding statement, whereas the M. uses the singular in conformity with M. 2-3.

P. 72. "Le-hakria" means to adduce proof in support of, see T. Pes. I, 7 for a similar use of this word, cf. also Pes. 21a.

P. 72-73. The remark of R. Jose fits quite well into our baraita. He says that R. Akiba only explains the view of Bet

Hillel because he agreed with it and neglected to add that according to him "makom karob" = "beit homah," as it would be very unlikely to assume too far going differences of opinion between the two schools.

P. 73. Potek" is derived from a similar form in Arabic and Syriac; "Badak" is a different root in Hebrew and Assyrian and Barth, *Etymologische Studien*, 24, is not correct in identifying the two.

P. 74. The reason why "shemen herefah" cannot be used on a Sabbath is because it is impure. Hence the reason is given first and then the inference.

P.75. All we may infer from the Tosefta is that the first three kinds of oil mentioned in the M. were discussed by R. T. and his colleagues, while the other burning material referred to in the M. were discussed by the other Tannaim. The author of the M. puts them all together in giving the view of the sages.

P. 77. T. 8d can only refer to the principle of intention and hence 8c refers to something similar.

P. 79. The text of 10b is corrupt and the correct reading is given in Yer. II, 7.

P. 80. M. II is placed between I and III to avoid misunderstanding, as if III, 1 belonged to the eighteen enactments of B. H. and B. Sh., since M. I, 10-11 are closely connected with the controversies between B. H. and B. Sh. There is no connection between M. Ter. II, 3 and M. Shab II, 7. Nor is it likely that in the arrangement of the Sabbath law there would be put together slight Rabbinical regulations with severe Biblical laws. In Ter. the laws of Sabbath and Terumah are contrasted with those of Shebiit with regard to the distinction between "Mezid" and "Shogeg." Hence planting is mentioned as an illustration of Sabbath work, the two Rabbinical prohibitions are mentioned and also cooking, cf. B. K. 71b and Hul. 15a. Shab. II and contradicts T. II, 9.

P. 81 Yer. has the reading "ke-maaseh" according to which the story of Tiberias refers to the previous M., cf. Noam Yer. and Lieberman Yer. Ki-peshuto ad loc.

P. 83. There is no need to amend Yer. III, 1. It refers to the T. which states that the rule given below and in M. Ter. II, 3 "be-shogeg yeakel" etc. is applicable to one who "forgets."

P. 87. M. V, 1-2 enumerates ten species of animals, if we supply "pered" from T. The ram and the ewe belong to one class as do the calf and the cow. The M. disregards the mule very likely because according to one view T. Kil. V, 6, it may not be used at all.

P. 88 M. VI, 1 originally read "lo be-hutin" which was later expanded.

P. 88, note 3. Phylacteries and amulets belong together. Sandals and amulets are prohibited under certain circumstances, whereas the rest are forbidden under all conditions.

P. 89, note 4. The reason for the difference between "bi-rit" (cf. Gandz, Mishnath ha-middot, p. 13, note 8) and "Kebalim" with regard to Sabbath is based upon their difference in reference to Levitical impurity and hence the reason precedes the inference. The participle "Yoze" is used for purposes of emphasis, because of the preceding adjectives. Note that M. 4 enumerates five kinds of weapons.

P. 90, line 11ff. The T. should not be emended as it is only a different reading of the M. The first point is a matter of difference between R. Meir and R. Eleazar, while the second is a point of dispute between the sages and R. Meir.

P. 91, note 1. Cf. Biblical Antiquities of Philo, p. 150, note 10.

P. 93. In VII, 2, the classification is: 1) agricultural work and every work connected with preparing food out of agricultural work; 2) work necessary for the preparation of cloth; 3) preparation of animal food and especially of game in which is included writing as the material was made of skin; 4) work connected with building in which fire plays an important part. Finally, carrying was in a class by itself.

P. 96, note 1.. Yer. contains no different enumeration of liquids, except that at the end it quotes a baraita where blood is mentioned. In Makshirin VI, 4, liquids are enumerated accord-

ing to their nature, 1) liquids furnished by nature, dew and water; 2) liquids produced from the vegetable world, wine and oil; 3) fluid furnished by animals, blood, milk and honey. In M. Shab. they are enumerated according to the "shiur," T. 10a is misplaced and belongs to a different source and was originally in the margin, hence the difference in order in the Erfurt MS. and the editions.

P. 99. The Minayin statements in the M. and T. contain the larger part of a halakic collection with their Midrashic sources arranged in alphabetical order. In M. IX, 1 the original reading was Elilim instead of Abodat Akum and others follow in alphabetical order. M. 3b preceded 3c because in M. Shab. the Sabbath law is given preference. In M. 4a the Samek stands for Sin. In the T. the alphabetical order is no longer recognizable. The M. and T. contain most of the alphabet. The missing letters can be supplied from other sources. For Gimel, hayeve Galut, T. Sanh. VII, 3; He, Minayin le-Hereg Sanh. 52b; vav, Minayin . . . . shemis-Vadin, Sanh. 43b; kaf, minayin, le-Kohen, Ker 7a; lamed, Minayin le-Lahme, Men, 15a; nun, minayin le-Nezirut, Naz. 5a; zadik, minayin le-Zarah, Yeb. 3b; taw, minayin le-teruma, T. Ter. Va.

P. 101, note 15. Dam Niddah is the correct reading and Makor in Lev. and Zech. naturally refer to Dam Niddah. T. 23c-29 presuppose Makshirin V, 4 and in M. 6 there is a special comment upon Dam Niddah. Concerning human milk cf. Ginzberg, Legends VI, 128, note 85.

P. 103. It is doubtful whether there is a genuine case of "tabra" in the M., cf. the essay of Horowitz mentioned above, p. 19, note 96. The remark was made by R. Eleazar in connection with one or two passages and was inserted by the editors of the Talmud in connection with other passages. For a similar use of "Resha" . . . "We-Sefa" cf. Ginzberg, Hoffmann-Festschrift, p. 335, note 3. The explanation of "Raba" and R. Ashi is based on good logic which implies two factors: 1) un-contemplated improvement in the work; 2) the exact correspondence between thought and action. According to R. Judah, work without premeditation is not unlawful, as is evident from the T. M. 4b is not an analogy to the case in which he differs

with his colleagues which deals with the question whether an unusual way of carrying is unlawful and the parallel to it is the inference from the M. that the unusual way of carrying is unlawful.

P. 105 M. 6a is brought in because M. 5 deals with the question of Melakah she'enah zerikah le-gufah, cf. Tosafot 94b, s. v. Abot, M. 6b is added as another case where R. Shimon differs with the scholars. T. X, 13 shows that M. 6a originally had a reference to Yomtob which explains the statement about "Shebut" in the M. that otherwise uses "Patur."

P. 106, note 12. Pardo's interpretation is not possible because of the mentioning of Gentile women and unclean animals together. To an adult the milk of the unclean animal is Biblically prohibited (Bek I, 2), that of a Gentile only rabbinically, whereas in a case of an infant both are forbidden rabbinically.

P. 110 T. 16-17 does not prove that the order of M. XII-1-2 was reversed, for T. 16 is connected with 15 by the common phrase "le-behemoh" which in turn is connected with T. 14 because of the phrase "ha-tolesh." Furthermore, T. 11-12 treat of throwing and building as does the M. in the same sequence.

P. 111-112. M. 3 means that the writing of two letters that constituted a word whether they are of the same kind, for example g g or of a different kind, as for example, b n is prohibited.

P. 114. Sifra might follow the order of the M. The question still remains, cf. Mek. di R. S., p. 16.

P. 116. Tosefta M. K. refers to Hol Ha-Moed which is permitted according to the M., while T. Shab. commenting upon the M. adds "me zebalim." This is proved by the fact that T. does not mention Kos Ikkarim (so the correct reading in the Erfurt MS.) because it is medicine that one drinks to still his thirst, while one might take "me zebalim" for the purpose of drinking. In M. K. "Kos Ikkarin" is mentioned because one may take medicine on Hol Ha-Moed.

P. 118, M. XV, 3 to the end, except ch. XIX deal with

Rabbinic laws, as do ch. I-IV, whereas ch. V-XV, 2 treat of Biblical laws.

P. 120. M. 7 is in the right place, as it concludes the laws concerning fire on Sabbath. Furthermore, it is the custom of the M. to close a group of laws with a "ma'aseh."

P. 123, note 1, cf. Lewy, *Mishnah Abba-Saul*, p. 18.

P. 125, note 5; Pamot is the Greek word Phanotes, cf. Syriac Panta.

P. 128, note 1, cf. Ginzberg, *Legends*, V, 268 where it was shown that Charles misunderstood the attitude of the halakah concerning circumcision on the Sabbath.

P. 128, note 3. It is hardly possible that R. Eliezar was still alive at the time of the Hadrianic persecutions. Perhaps it refers to the days of Domitian.

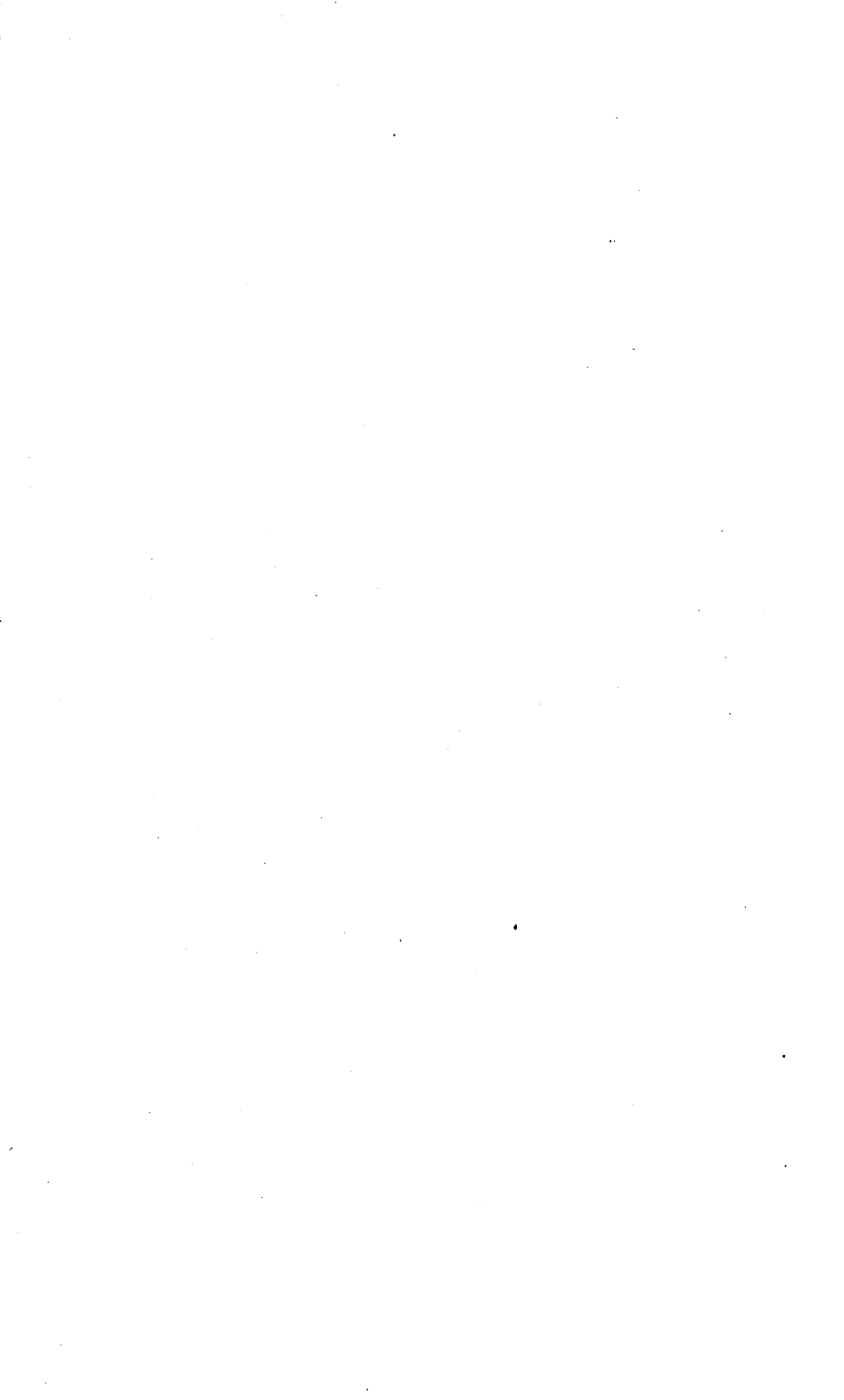
P. 128, note 5. There is no difference between XIX, 3 and XX, 2. The first is quoted from the second to make a transition from ch. XIX to XX.

P. 128, note 6. M. IX, 3b is not a quotation from the Minayin Mishnahs, but is taken from another Sabbath collection. Hence the different reading in the text.

P. 137, note 3. The word "invatanuto" used by R. Jose which was misunderstood by the commentators means diffidence.

P. 139, note 1. Cf. Also Ginzberg, *Ginze Schechter*, I, 28 and Assaf, *Sifran Shel-Rishonim*, p. 94.

P. 143, note 2. The passage in the Mek. R. S. is not Tannaitic. It is found in fuller form in *Menorat Hamoar*, ed. Enelow, III., 603-605.









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